The following is an excerpt from my brief for Vanderbilt's 2020 Intramural Moot Court Competition, where I placed as a quarterfinalist. The case presented the question whether a state law requiring pediatricians to recommend that parents not keep guns in their home facially violates the First Amendment. This excerpt was edited solely by me and details my argument on behalf of Respondent, the State of Alps, minus my tiers of scrutiny analysis.

I. THE JUDGMENT OF THE TWELTH CIRCUIT SHOULD BE AFFIRMED BECAUSE THE AFSA'S PEDIATRICIAN WARNING PROVISION SATISFIES THE *BECERRA* EXCEPTIONS FOR CONTENT-BASED REGULATIONS AND IS APPROPRIATELY TAILORED TO AN IMPORTANT GOVERNMENT INTEREST, AND IN ANY EVENT IS NARROWLY TAILORED TO A COMPELLING GOVERNMENT INTEREST.

Petitioner contends that the Pediatrician Warning provision constitutes compelled speech irreconcilable with the text and values at the heart of the First Amendment. (D. Alps at *17.) By requiring physicians to inform parents during a standard three-month checkup that they should "consider a gun-free home because firearm ownership increases the risk of childhood death," Petitioner believes that his medical practice has been co-opted by the state for the purpose of espousing information that he views as linked with an ideological stance contrary to his personal views. (*Id*.) Thus, Petitioner argues, the provision regulates both the subject-matter and viewpoint of physicians' speech, and as such facially violates the First Amendment. (*Id*.)

The First Amendment, incorporated against the states via the Fourteenth Amendment, provides that "Congress shall make no law . . . abridging the freedom of speech." U.S. Const. amend. I. This Court has described the First Amendment as meaning "above all else . . . that government has no power to restrict expression because of its . . . content." *Police Dep't of Chicago v. Mosley*, 408 U.S. 92, 95-96 (1972). Whether a law is a content-based speech regulation turns on whether the law regulates either the viewpoint or subject-matter of speech. *Perry Education Ass'n v. Perry Local Educators Ass'n*, 460 U.S. 37, 45 (1983). Laws regulating the content of speech are subject to the strictest scrutiny under the First Amendment; such laws are presumptively unconstitutional and will only be upheld if they are narrowly-tailored to serve a compelling government interest. *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015). However, this Court has been careful to acknowledge that certain content-based speech regulations warrant less exacting scrutiny. *Nat'l Institute of Family and Life Advocates v. Becerra*, 138 S.Ct. 2361,

2372 (2018). Two such long-standing exceptions affirmed by this Court in *Becerra* are particularly relevant: where regulated speech is merely incidental to conduct, and where professionals are required to disclose factual, non-controversial information related to their services. *Id*. Additionally, the *Becerra* Court highlighted the continued legality of "health and safety warnings long considered permissible." *Id.* Facial challenges to a government regulation require a plaintiff to show that there is no set of circumstances under which the regulation can be harmonized with the Constitution. *United States v. Salerno,* 481 U.S. 739, 745 (1987). Thus, Petitioner's successful challenge requires a showing that the Pediatrician Warning provision is a content-based regulation that fails strict scrutiny, or that the regulation fails less exacting scrutiny if it qualifies under one of the *Becerra* exceptions. Petitioner has failed to meet this burden, and as such this Court should uphold the Twelfth Circuit's ruling in favor of Respondent.

While the Pediatrician Warning provision is not a viewpoint-based regulation, it is undeniably content-based. However, because it falls within at least one (and arguably all) of the *Becerra* exceptions and is appropriately tailored to an important government interest, this Court should find that it survives more deferential review. Should this Court find that the Pediatrician Warning provision does not qualify under the *Becerra* exceptions, it should nonetheless uphold the regulation under strict scrutiny because it is narrowly tailored to a compelling government interest.

A. The AFSA's Pediatrician Warning provision is a subject-matter-based speech regulation, but satisfies the *Becerra* exceptions for garnering deferential review.

While regulations that color the content of compelled speech are presumptively unconstitutional, certain categories of content-based speech regulations are not subject to such exacting scrutiny. *Becerra,* 138 S.Ct. at 2372; *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 567

(2011); *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833, 884 (1992); *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U.S. 626, 651 (1985). In *Becerra*, this Court heard a challenge by anti-abortion crisis pregnancy centers against a California law requiring them to disclose the availability of low-cost abortion options in the state. *Becerra,* 138 S.Ct. at 2368. The *Becerra* court affirmed the constitutionality of three previously recognized exceptions that garner less-than-strict scrutiny: regulating speech incidental to conduct, professional disclosure of factual, non-controversial information and "health and safety warnings long considered permissible." *Id.* at 2372-76. While the *Becerra* Court found that the disclosures at issue failed to satisfy these exceptions, this Court should find that the Pediatrician Warning provision satisfies anyone of these exceptions and should not be subjected to strict scrutiny.

1. The Pediatrician Warning provision regulates speech incidental to a physician's conduct.

Where a regulation burdens speech incidental to professional conduct, this Court's precedents have generally applied more deferential review. *Becerra*, 138 S.Ct. at 2372; *Casey*, 505 U.S. at 884.

In *Becerra*, this Court ruled that a California law requiring crisis pregnancy centers to post disclosure notices advertising the availability of low-cost abortion services could not be upheld as a regulation of speech incidental to these centers' professional conduct. 138. S.Ct. at 2373. This Court distinguished the disclosures at issue in *Becerra* with those in *Casey*, where a Pennsylvania law required doctors performing abortions to inform patients undergoing the procedure about the nature of the procedure, the attendant health risks, and the "probable gestational age" of the unborn fetus. *Id.* While the disclosures in *Casey* were upheld as an informed consent requirement incidental to the procedure and subject to "reasonable licensing

and regulation by the state," this Court found that the disclosures in *Becerra* did not facilitate informed consent for a particular procedure and applied "to all clients, regardless of whether a medical procedure is ever sought, offered, or performed." *Id.* Rather, the disclosures related specifically to a procedure *not* offered at the facilities and were not required to be provided by many facilities that offered the same services as crisis pregnancy centers (i.e. general practice clinics). *Id*. Since the regulation altered speech unrelated to the particular conduct of these facilities, the Court found the law regulated "speech as speech," thereby placing it within the ambit of First Amendment strict scrutiny analysis. *Id*. at 2374.

The Pediatrician Warning provision is more analogous to the disclosures upheld in *Casey* than those struck down in *Becerra*. Just as the disclosures in *Casey* were incidental to a particular procedure, the disclosure here is tied in particular to the standard three-month checkup. One of the conventional aspects of this checkup includes a candid conversation between a physician and parents about how best to keep kids safe and healthy. (12th Cir. at *102.) (noting that "giving advice to parents about the well-being of their child" is part of a pediatrician's "traditional practice."). Recent lower court precedent provides persuasive reasoning that, in certain circumstances, a doctor's speech is irreducible from her practice as a physician. *Otto v. City of Boca Raton, Florida*, 353 F.Supp.3d 1237, 1270 (S.D. Fla. 2019) (explaining that conversion therapy, a procedure administered primarily through speech, could be regulated as conduct because speech was "the manner of delivering the treatment."). Unlike in *Becerra*, the Pediatrician Warning provision does not relate to a service not offered by the physician, is not blanketly broadcast to all who walk in, and is not discriminatorily applied against certain pediatricians. Rather, the disclosure is inextricably tied to the communicative aspect of a three-month checkup, is limited specifically to this traditional practice, and is generally applicable to

all pediatricians within the state of Alps. Thus, the Pediatrician Warning provision regulates speech incidental to a pediatrician's conventional conduct during a three-month checkup and should be analyzed under more deferential review than strict scrutiny.

2. The AFSA regulates professional speech involving factual and uncontroversial information.

When laws compel commercial speech by professionals containing factual, uncontroversial information, this Court's precedents have generally applied exacting scrutiny. *Becerra*, 138 S.Ct. at 2372; *Zauderer*, 471 U.S. at 651. While the "precise bounds of . . . commercial speech" are "subject to doubt," at a minimum such speech must be related to the services provided by a particular entity. *Zauderer*, 471 U.S. at 651. That such compelled commercial speech must also be factual and noncontroversial is meant to insulate "the speaker's right to autonomy over the message." *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc.*, 515 U.S. 557, 576 (1995).

In *Becerra*, this Court ruled that requiring crisis pregnancy centers to post notices about low-cost abortion services did not qualify as professional commercial speech containing factual, uncontroversial information. 138. S.Ct. 2372. This Court distinguished this requirement from an Ohio rule in *Zauderer* that required attorneys paid on contingency to disclose in their advertisements that clients might have to foot the bill for fees and costs. 471 U.S. at 651. Unlike the rule in *Zauderer*, which related to "purely factual and uncontroversial information about the terms under which . . . services will be available," this Court found that the disclosure in *Becerra* "in no way relate[d] to the services" provided by crisis pregnancy centers, but rather to "state-sponsored . . . abortion, anything but an "uncontroversial" topic. *Becerra*, 138 S.Ct. at 2372. Thus, the Court found inapplicable the *Zauderer* standard for compelled professional speech conveying factual, uncontroversial information. *Id.*

Far from a notice bearing no relation to the services provided, the Pediatrician Warning provision is limited in application to the communicative aspect of a pediatrician's professional services. Since expert advice on keeping children safe and healthy is one of the principal reasons parents transact with pediatricians, pediatric advice ought rightly be characterized as a commercial product sought within the transaction of a three-month checkup. As such, the Pediatrician Warning provision regulates professional speech that hews even closer to commerce than the disclosure rule upheld in *Zauderer* because the speech regulated goes part and parcel with the service rendered.

Similar to the disclosure in *Zauderer*, the Pediatrician Warning provision consists of entirely factual information, the veracity of which Petitioner does not controvert. (12th Cir. at *59.) (12th Cir. at *86-87.) (Mayfield, J., dissenting). As the AFSA's legislative history makes clear, "study after study has repeatedly shown that there is an increased risk of harm for children in homes with guns." (12th Cir. at *102.) At the point where "firearm-ownership increases the risk of childhood death" is a statistically verifiable fact, it cannot be said that such a statement is "controversial" simply because the topic of gun-ownership is politically-charged. (12th Cir. at *59.) Such an obtuse conception of "controversial" not only broadens the meaning contemplated by this Court in *Becerra*, but runs the risk of sweeping in an untold swath of common informed consent requirements. Carl H. Coleman, *Regulating Physician Speech*, 97 N.C. L. Rev. 843, 876-78 (2019). In a political climate where the partisan gulf has given way to increasingly divergent understandings of social reality, the impartiality of this Court affords its unique status as an objective arbiter whose decisions are respected by both sides of the aisle. Charles Gardner Geyh, *The Dimensions of Judicial Impartiality*, 65 Fla. L. Rev. 493, 505 (2013). Thus, it should

behoove this Court not to drive further the partisan wedge by deeming objectively provable information "controversial" simply by virtue of topicality.

Additionally, the Pediatrician Warning provision requires pediatricians to couch the uncontroverted fact that gun ownership is tied to childhood death within the context that "parents should consider" whether to keep guns in their home. Judge Mayfield makes much hay of this portion of the provision in his impassioned dissent, analogizing it to an alternate version of the law in *Becerra* that would have required crisis pregnancy centers to post notices saying "'patients should consider having an abortion.'" (12th Cir. *83.) (Mayfield, J., dissenting). Since such a statement would compel facilities to broadcast the state's normative stance, Judge Mayfield argues that the *Becerra* Court would have quickly struck it down. (*Id*.) This analogy is fundamentally incongruous because, even absent the provision's contextual phrasing, the verifiable fact that "firearm ownership increases the risk of childhood death" necessarily invites the inquiry: should parents keep guns in their home? Requiring pediatricians to contextualize this crucial piece of factual information does not advance a normative stance on whether parents should own guns, but facilitates precisely the "conversation between pediatricians and parents about what is best for each individual circumstance" that the legislature intended in enacting the AFSA. (12th Cir. at *102.) That pediatricians are welcome to enhance the depth of this conversation with their personal views on the merits of gun ownership should serve to dispel any consternation that Petitioner or any other pediatrician in Alps will sacrifice "their right to autonomy" over the message conveyed. *Hurley*, 515 U.S. at 576. Thus, this Court should find that the Pediatrician Warning provision garners less exacting scrutiny as commercial, professional speech that is both factual and uncontroversial.

3. The AFSA's Pediatrician Warning provision can be characterized as a permissible health and safety warning.

Warnings related to health and safety are generally lawful. *Becerra,* 138 S.Ct. at 2376. In *Becerra*, this Court clarified that its holding did not "question the legality of health and safety warnings long considered permissible." *Id*. Though not announcing this category as a bona fide exception unto itself, lower courts have taken this caveat to suggest that applicable health and safety warnings are not subject to strict scrutiny. (D. Alps at *37.)

The Pediatrician Warning provision ought rightly be appraised as a health and safety warning. The AFSA's legislative history makes clear that both the purpose and intent behind the Warning provision is to mitigate the pressing problem of child gun deaths. (12th Cir. at *102.) While the particular formulation of the warning might be novel within the state, the authority of states to respond to new public health dangers under their plenary power to legislate for the general welfare has long been considered permissible. *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 535-37 (2012). The Pediatrician Warning provision thus fits within Alps' health and safety regulatory scheme, and as such should not be subject to strict scrutiny.

B. The ASFA's Pediatrician Warning provision is not viewpoint discriminatory because the provision is non-ideological and can be supplemented with the speaker's own viewpoint.

When a regulation favors a particular speaker or point of view, the government has engaged in viewpoint discrimination. *Wooley v. Maynard*, 430 U.S. 705, 714 (1977). In instances of compelled speech, viewpoint-based regulations are considered particularly invidious because they cause individuals to "be an instrument for fostering public adherence to an ideological point of view they find unacceptable." *Id.* at 715. Viewpoint discrimination in speech regulations can be deduced from either the regulation's legislative history or from the content of the speech it regulates. *Nat'l Endowment for the Arts v. Finley,* 524 U.S. 569, 579 (1998).

The majority in *Becerra* never held that requiring crisis pregnancy centers to post notices advertising state-sponsored abortion services was necessarily viewpoint discriminatory. 138 S. Ct. at 2378. However, Justice Kennedy's concurrence noted that the law's ostensible viewpoint discrimination represented a "serious constitutional concern." *Id.* at 2379. (Kennedy, J., concurring). Since the law applied primarily to "pro-life pregnancy centers" and required them to promote "the State's own preferred messaging advertising abortion," Justice Kennedy found viewpoint discrimination to be "inherent in the design and structure of the Act." *Id*.

Here, the Pediatrician Warning provision neither advances a particular viewpoint nor favors one viewpoint over another. The legislative history of the AFSA makes clear that the statute was passed not for the purpose of advancing an "anti-gun ideology," but to "ensure the safety of children . . . [by] allow[ing] parents to be better informed, empowering them to choose the best course of action for their families." (12th Cir. at *102.) The required statement is not intended to discourage gun ownership per se, but to "foster a conversation between pediatricians and parents about what is best for each individual circumstance." *Id*. Far from an ideologically-charged admonishment, the required statement empowers parents with viewpoint-neutral information while creating space for a nuanced discussion on what is best for a particular family. To this end, Petitioner's thoughtful viewpoint on guns in homes (which acknowledges the statistical risks but accounts for their potential usefulness in self-defense) is both welcome and encouraged by the Pediatrician Warning provision.

Applicant Details

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Applicant Education

BA/BS From	**College of the Holy Cross**
Date of BA/BS	**May 2019**
JD/LLB From	**The Catholic University of America, Columbus School of Law** **http://www.nalplawschoolsonline.org/ndlsdir_search_results.asp?lscd=50903&yr=2009**
Date of JD/LLB	**May 24, 2022**
Class Rank	**15%**
Law Review/ Journal	**Yes**
Journal(s)	**Catholic University Law Review**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**Yes**
Post-graduate Judicial Law Clerk	**Yes**

Specialized Work Experience

Recommenders

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References

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This applicant has certified that all data entered in this profile and any application documents are true and correct.

625 Monroe Street NE
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June 12, 2021

The Honorable Elizabeth W. Hanes
United States District Court for the Eastern District of Virginia
Spottswood W. Robinson III and Robert R. Merhige, Jr.,
Federal Courthouse
701 East Broad Street
Richmond, VA 23219

Dear Judge Hanes:

I am a third-year law student at The Catholic University of America, Columbus School of Law. I am writing to apply to be a law clerk in your chambers for the 2022-2024 term. My professional and law school experiences make me a great fit to be your law clerk. I would be honored to be considered for a position as your law clerk.

My experience as a judicial intern for Judge Peter P. Sweeney and a law clerk for McCarthy Wilson LLP has enabled me to develop an extensive understanding of the litigation process and sharpen my analytical skills. As a judicial intern, I researched change of venue and summary judgment issues before the court, wrote memoranda based on my findings, and observed numerous trials. In addition, my position as a law clerk with a private firm has exposed me to litigation from an attorney's viewpoint. In this capacity, I draft many discovery requests and responses as well as aid in mediation and trial preparation such as planning trial strategy.

In addition to professional experiences, my time as a Staff Editor and now as an Associate Editor of the *Catholic University Law Review* and a Teaching Assistant for Legal Research and Writing has further enhanced my research and communication skills. As a Staff Editor, I have written a Note exploring the constitutionality of religious charter schools over the course of the year. As a Teaching Assistant, I have taught and reviewed bluebook citation guidelines and legal research techniques to first-year law students.

I believe that my strong work ethic, knowledge of the litigation process gained from my professional and law school experiences, and willingness to learn would enable me to contribute to your chambers.

My resume, unofficial law school transcript, unofficial undergraduate transcript, and writing sample are submitted with this application. I would welcome an opportunity to meet with you. Please let me know if I can answer any questions or provide any other information. My contact information is as follows: Cell: (718) 594-4464; Email: russoj@cua.edu.

Thank you for your time and consideration.

Respectfully submitted,

Jessica Russo

JESSICA ANN RUSSO

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EDUCATION

The Catholic University of America, Columbus School of Law, Washington, D.C.
Juris Doctor, Compliance, Investigations, and Corporate Responsibility Program, Civil Litigation Concentration, expected May 2022, GPA: 3.636 (Top 15.46%)

Honors: *Catholic University Law Review*, Associate Editor, Volume 71 and Staff Editor, Volume 70; Teaching Assistant for Professor Frederick E. Woods (Legal Research and Writing) (2020 – 2021); Research Fellow for Associate Dean of Student Affairs and Research Mary Graw Leary (2021 – Present); Dean's List

Activities: Law and Technology Student Association, Member; Christian Legal Aid of DC, Law Student Volunteer; People's Law Library, Editor/Reviewer

College of the Holy Cross, Worcester, Massachusetts
Bachelor of Arts in Political Science and Peace and Conflict Studies with Rhetoric and Composition Minor, *cum laude*, May 2019

Honors: Mediation Team, National Champion at INADR International Intercollegiate Mediation Championship (2018); Dean's List; Political Science Departmental Honors Program; Pi Sigma Alpha (Political Science Honors Society), Inductee; George H. Hampsch Award for "outstanding contribution to the Cause of Peace", 2019 Recipient; William E. Leahy Award for "leadership as a debater", 2019 Recipient

Activities: Mock Trial Team, President; Mediation Team, President; Judicial Council of the Student Government Association, Justice; Silence to Sound Campaign, Founder

PROFESSIONAL EXPERIENCE

McCarthy Wilson LLP, Rockville, Maryland
Law Clerk, June 2020 – Present

- Conduct research on insurance coverage, insurance defense, insurer bad faith defense, commercial litigation, professional liability, construction litigation, toxic torts, products liability, subrogation, and workers compensation issues and draft detailed memoranda analyzing the same
- Draft pleadings, motions, discovery requests, and discovery responses for active matters
- Assist in trial, deposition, and mediation preparations including planning of trial strategy and trial exhibits
- Review insurance company case files and provide initial case evaluations to attorney and adjuster

Kings County Supreme Court Civil Term, The Honorable Peter P. Sweeney, Brooklyn, New York
Judicial Intern, May 2018 – August 2018

- Researched outstanding tort liability and estate dispute issues pending before the court and drafted bench memoranda analyzing the same
- Briefed judge on issues presented on the docket
- Observed motion hearings and trials involving tort liability and estate disputes

PUBLICATION

Russo, Jessica, "Understanding NGOs and their Effectiveness through a Comparative Study of their Role in REDD+," *CrossWorks*, 5 (May 2019), 1–103.

INTERESTS

Writing, Painting, Travel

THE CATHOLIC UNIVERSITY OF AMERICA

Unofficial Transcript

Name: **Jessica Russo**
Student ID: **5178841**

Birthdate: 06/06
Print Date: 06/04/2021
Send To:

Beginning of Law Record

Fall 2019 (08/19/2019- 12/18/2019)

Program: School of Law
Major: Law (JD)

Course		Description	Attempted	Earned	Grade	Points
LAW	101	Lawyering Skills Instructor: Frederick E. Woods	2.000	2.000	A	8.000
LAW	107	Civil Procedure Instructor: Megan M. LaBelle	3.000	3.000	P	0.000
LAW	119	Contracts Instructor: Elizabeth I. Winston	3.000	3.000	P	0.000
LAW	129	Criminal Law Instructor: Mary G. Leary	3.000	3.000	A-	11.010
LAW	138	Torts Instructor: Marin R. Scordato	4.000	4.000	B	12.000
LAW	291	Legal Methods Workshop Instructor: Katherine G. Crowley Instructor: Bryan Jonathan McDermott	1.000	1.000	P	0.000

			Attempted	Earned	GPA Units	Points
Term GPA	3.446	Term Totals	16.000	16.000	9.000	31.010
Transfer Term GPA		Transfer/Test/Other Totals	0.000	0.000	0.000	0.000
Combined GPA	3.446	Combined Totals	16.000	16.000	9.000	31.010

			Attempted	Earned	GPA Units	Points
Cum GPA	3.446	Cum Totals	16.000	16.000	9.000	31.010
Transfer Cum GPA		Transfer/Test/Other Totals	0.000	0.000	0.000	0.000
Combined Cum GPA	3.446	Combined Totals	16.000	16.000	9.000	31.010

Spring 2020 (01/06/2020- 05/11/2020)

Program: School of Law
Major: Law (JD)

Course		Description	Attempted	Earned	Grade	Points
LAW	102	Lawyering Skills II Instructor: Frederick E. Woods	2.000	2.000	P	0.000
LAW	107B	Civil Procedure Instructor: Megan M. LaBelle	3.000	3.000	P	0.000
LAW	114	Constitutional Law I Instructor: Mark L Rienzi	3.000	3.000	P	0.000
LAW	120	Contracts Instructor: Elizabeth I. Winston	3.000	3.000	P	0.000
LAW	132	Property Instructor: Lucia Ann Silecchia	4.000	4.000	P	0.000

			Attempted	Earned	GPA Units	Points
Term GPA	0.000	Term Totals	15.000	15.000	0.000	0.000
Transfer Term GPA		Transfer/Test/Other Totals	0.000	0.000	0.000	0.000
Combined GPA	0.000	Combined Totals	15.000	15.000	0.000	0.000

			Attempted	Earned	GPA Units	Points
Cum GPA	3.446	Cum Totals	31.000	31.000	9.000	31.010
Transfer Cum GPA		Transfer/Test/Other Totals	0.000	0.000	0.000	0.000
Combined Cum GPA	3.446	Combined Totals	31.000	31.000	9.000	31.010

Fall 2020 (08/24/2020- 12/21/2020)

Program: School of Law
Major: Law (JD)

Course		Description	Attempted	Earned	Grade	Points
LAW	206	Corporations Instructor: Sarah H. Duggin	3.000	3.000	A	12.000
LAW	423	Crim Pro:Investigative Proc Instructor: Mary G. Leary	3.000	3.000	B	9.000
LAW	496	Cyberlaw Instructor: Christopher W. Savage	3.000	3.000	A-	11.010
LAW	604	Constitutional Law II Instructor: Mark L Rienzi	3.000	3.000	B+	9.990
LAW	670	Anatomy of a Civil Case Instructor: James Robert Germano	2.000	2.000	P	0.000
LAW	991	Law Journal Writing Course Topic: Law Review Instructor: Alonzo G. Harmon	1.000	1.000	P	0.000

THE CATHOLIC UNIVERSITY OF AMERICA

Unofficial Transcript

Name: Jessica Russo
Student ID: 5178841

			Attempted	Earned	GPA Units	Points
Term GPA	3.500	Term Totals	15.000	15.000	12.000	42.000
Transfer Term GPA		Transfer/Test/Other Totals	0.000	0.000	0.000	0.000
Combined GPA	3.500	Combined Totals	15.000	15.000	12.000	42.000

			Attempted	Earned	GPA Units	Points
Cum GPA	3.477	Cum Totals	46.000	46.000	21.000	73.010
Transfer Cum GPA		Transfer/Test/Other Totals	0.000	0.000	0.000	0.000
Combined Cum GPA	3.477	Combined Totals	46.000	46.000	21.000	73.010

Spring 2021 (01/04/2021- 05/10/2021)

Program: School of Law
Major: Law (JD)

Course		Description	Attempted	Earned	Grade	Points
LAW	201	Administrative Law Instructor: Megan M. LaBelle	3.000	3.000	B+	9.990
LAW	223	Evidence Instructor: Mary G. Leary	4.000	4.000	A	16.000
LAW	401	Appellate Advocacy Instructor: Lesley Anne Fair	2.000	2.000	A	8.000
LAW	461	Professional Responsibility Instructor: Lisa Anjou Everhart	3.000	3.000	A+	12.990
LAW	992	Law Journal Writing Instructor: Alonzo G. Harmon	1.000	1.000	P	0.000

			Attempted	Earned	GPA Units	Points
Term GPA	3.915	Term Totals	13.000	13.000	12.000	46.980
Transfer Term GPA		Transfer/Test/Other Totals	0.000	0.000	0.000	0.000
Combined GPA	3.915	Combined Totals	13.000	13.000	12.000	46.980

			Attempted	Earned	GPA Units	Points
Cum GPA	3.636	Cum Totals	59.000	59.000	33.000	119.990
Transfer Cum GPA		Transfer/Test/Other Totals	0.000	0.000	0.000	0.000
Combined Cum GPA	3.636	Combined Totals	59.000	59.000	33.000	119.990

Fall 2021 (08/23/2021- 12/20/2021)

Program: School of Law
Major: Law (JD)

Course		Description	Attempted	Earned	Grade	Points
LAW	241	Trusts & Estates Instructor: Lucia Ann Silecchia	4.000	0.000		0.000
LAW	405B	Compliance, Ethics, Corp Resp Instructor: Sarah H. Duggin	2.000	0.000		0.000
LAW	450A	e-Discovery Instructor: JAMIE Edward BERRY	1.000	0.000		0.000
LAW	466	Commercial Transactions Instructor: Veryl V. Miles	3.000	0.000		0.000
LAW	519	Agency/Partnership Instructor: Stephen C. Carlin	2.000	0.000		0.000
LAW	595	Trial Practice Instructor: Daniel F. Attridge	3.000	0.000		0.000

Law Career Totals

Cum GPA:	3.636	Cum Totals	59.000	59.000	33.000	119.990
Transfer Cum GPA		Transfer/Test/Other Totals	0.000	0.000	0.000	0.000
Combined Cum GPA	3.636	Combined Totals	59.000	59.000	33.000	119.990

End of Unofficial Transcript

Name: **Jessica A Russo**
Student ID: **0479418**
Print Date: **06/03/2019**

Unofficial Transcript

Academic Program History

Program:	Undergraduate	
04-30-2015:	Active in Program	Undeclared Major
04-25-2016:	Active in Program	Political Science Major
05-08-2017:	Active in Program	Political Science Major
		Latin American and Latino Studies
		Peace and Conflict Studies Concentration
05-11-2018:	Active in Program	Political Science Major
		Multi-Disciplinary Major
		Peace and Conflict Major
		Multi-Disciplinary Minor
		Rhetoric and Composition
05-24-2019:	Completed Program	Political Science Major
		Multi-Disciplinary Major
		Peace and Conflict Major
		Multi-Disciplinary Minor
		Rhetoric and Composition

Degrees Awarded

Degree:	Bachelor of Arts
Confer Date:	05-24-2019
Degree GPA:	3.610
Degree Rank:	167 of 698
Degree Honors:	Cum Laude
Plan:	Political Science Major with Honors
Plan:	Multi-Disciplinary Major - Peace and Conflict
Plan:	Multi-Disciplinary Minor - Rhetoric & Composition

Test Credits

Test Credits Applied Toward Undergraduate Program

Fall 2015

Course		Description	Attempted	Earned	Grade	Points
HIST	101-AP	American History		1.00	T	
PSYC	100-AP	Introduction To Psychology		1.00	T	
SPAN	102-LG	Course Equivalent-Elem SPAN 2			T	

Transfer Totals: 2.00

Beginning of Undergraduate Record

Fall 2015

Course		Description	Attempted	Earned	Grade	Points
BIOL	161	Intro Cell & Molecular Biology	1.25	1.25	B	3.750
MONT	100N	Our Bodies	1.00	1.00	B	3.000
SOCL	101	The Sociological Perspective	1.00	1.00	A-	3.700
SPAN	201	Intermediate Spanish 1	1.00	1.00	A-	3.700

			Attempted	Earned	Points
Term GPA:	3.33	Term Totals:	4.25	4.25	14.150
Cum GPA:	3.33	Cum Totals:	4.25	6.25	14.150

Spring 2016

Course		Description	Attempted	Earned	Grade	Points
BIOL	162	Intro to Mechanism of Multicel	1.25	1.25	B	3.750
CHEM	181	Atoms & Molecules	1.50	1.50	C+	3.450
MONT	101N	Our World	1.00	1.00	B	3.000
SPAN	202	Intermediate Spanish 2	1.00	1.00	A-	3.700

			Attempted	Earned	Points
Term GPA:	2.93	Term Totals:	4.75	4.75	13.900
Cum GPA:	3.12	Cum Totals:	9.00	11.00	28.050

Fall 2016

Course		Description	Attempted	Earned	Grade	Points
BIOL	163	Intro Biol Diversity & Ecology			W	
CISS	201	Legal Reasoning & Rhetoric	1.00	1.00	A	4.000
MATH	135	Calculus 1	1.00	1.00	A-	3.700
POLS	100	Principles American Government	1.00	1.00	A-	3.700
POLS	103	Intro To Internat'l Relations	1.00	1.00	A-	3.700

			Attempted	Earned	Points
Term GPA:	3.78	Term Totals:	4.00	4.00	15.100
Cum GPA:	3.32	Cum Totals:	13.00	15.00	43.150

Dean's List - First Honors

Spring 2017

Course		Description	Attempted	Earned	Grade	Points
ECON	111	Principles Of Macroeconomics	1.00	1.00	B	3.000
MATH	136	Calculus 2			W	
POLS	101	Intro To Political Philosophy	1.00	1.00	A-	3.700
POLS	102	Intro To Comparative Politics	1.00	1.00	A-	3.700

			Attempted	Earned	Points
Term GPA:	3.47	Term Totals:	3.00	3.00	10.400
Cum GPA:	3.35	Cum Totals:	16.00	18.00	53.550

Fall 2017

Course		Description	Attempted	Earned	Grade	Points
CISS	207	Mediation: Theory & Practice	1.00	1.00	A	4.000
POLS	206	Public Policy	1.00	1.00	A-	3.700
POLS	299	Nat Res Conflicts in Latin Am	1.00	1.00	A-	3.700
RELS	143	Social Ethics	1.00	1.00	A	4.000
RELS	143C	Social Ethics CBL			NG	
SOCL	299	Race, Crime, and Justice	1.00	1.00	A	4.000

			Attempted	Earned	Points
Term GPA:	3.88	Term Totals:	5.00	5.00	19.400
Cum GPA:	3.47	Cum Totals:	21.00	23.00	72.950

Dean's List - First Honors

Name: Jessica A Russo
Student ID: 0479418
Print Date: 06/03/2019

Unofficial Transcript

Spring 2018

Course		Description	Attempted	Earned	Grade	Points
ENGL	381	Rhetoric	1.00	1.00	A	4.000
HIST	272	Native American History II	1.00	1.00	A-	3.700
POLS	217	The Constitution in Wartime	1.00	1.00	A-	3.700
POLS	300	Law, Politics & Society	1.00	1.00	A-	3.700
SOCL	210	Consumer & Corp Sustainability	1.00	1.00	A-	3.700

			Attempted	Earned	Points
Term GPA:	3.76	Term Totals:	5.00	5.00	18.800
Cum GPA:	3.53	Cum Totals:	26.00	28.00	91.750

Dean's List - First Honors

Fall 2018

Course		Description	Attempted	Earned	Grade	Points
ENGL	387	Composition Theory & Pedagogy	1.00	1.00	A	4.000
HIST	126	Colonial Latin America	1.00	1.00	A	4.000
POLS	299	Pol Phil Of The Enlightenment	1.00	1.00	A-	3.700
POLS	490	Political Sci Honors Thesis			IP	
	Course Topic:	Non-Profit Industry				

			Attempted	Earned	Points
Term GPA:	3.90	Term Totals:	3.00	3.00	11.700
Cum GPA:	3.57	Cum Totals:	29.00	31.00	103.450

Dean's List - First Honors

Spring 2019

Course		Description	Attempted	Earned	Grade	Points
ENGL	210	Intermediate Academic Writing	1.00	1.00	A	4.000
ENGL	399	American Activist Rhetoric	1.00	1.00	A	4.000
POLS	287	Humanitarianism	1.00	1.00	A	4.000
POLS	491	Political Sci Honors Thesis	2.00	2.00	A-	7.400
	Course Topic:	Non-Profit Industry				

			Attempted	Earned	Points
Term GPA:	3.88	Term Totals:	5.00	5.00	19.400
Cum GPA:	3.61	Cum Totals:	34.00	36.00	122.850

Undergraduate Career Totals

Cum GPA:	3.61	Cum Totals:	34.00	36.00	122.850

End of Transcript

June 08, 2021

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

I am writing you this letter in support of Jessica Russo's application to be your law clerk upon her graduation from law school in May of 2022. I wholeheartedly and without reservation recommend her for your law clerk position.

I am a partner with the law firm of McCarthy Wilson LLP. Our practice focuses primarily in the civil litigation defense field. This work encompasses all ranges of trial practice, including personal injury claims, construction law, and insurance coverage.

Jessica began working with our firm after completing her first year in law school. For the past year, she has worked with me and several other attorneys in the office. During the summer months, she works on a fulltime basis. During her school year, she works on a part-time basis with a reduced work schedule in order to satisfy her academic commitments. Her ability to attend law school fulltime and work at the law firm illustrates her organizational skills and work ethic. Jessica is dedicated to producing a quality work product. I have been able to rely upon her research and analysis. She has participated in research projects and has drafted various complaints, discovery requests and responses, and motions. She has also had the opportunity to attend several depositions as well as bench and jury trials.

She has communicated with clients directly when assisting in the preparation of discovery responses. Jessica has demonstrated the ability to communicate effectively with our clients. She is also very much a "team player" and works well with everyone in the office.

Although I never had the opportunity to serve as a law clerk for a Trial Judge, as a trial lawyer I appreciate the demands and expectations placed upon the law clerk. Jessica's ability to "juggle" the responsibilities of work and school proves that she will be an asset to managing a busy docket. Jessica has the intellectual ability and professional demeanor to serve as a law clerk and to assist anyone with whom she works.

If you have any questions concerning Jessica's qualifications or experience with the firm, please do not hesitate to contact me.

Very truly yours,

/s/ Jonathan R. Clark
Jonathan R. Clark
CLARKJ@MCWILSON.COM
301-762-7770 Main
240-238-0518 Direct

THE CATHOLIC UNIVERSITY OF AMERICA
Columbus School of Law
Office of the Faculty
Washington, DC 20064
202-319-5140

June 9, 2021

RE: Recommendation Supporting **Jessica Ann Russo** for a Judicial Clerkship

Dear Judge:

I write to support Jessica Ann Russo, an applicant for a judicial clerkship in your chambers. Jessica is a third-year law student at The Catholic University of America, Columbus School of Law ("CSL"). She graduates with her J.D. degree next May 2022.

Jessica was a student in my 2019-20 Lawyering Skills Program course ("LSP I & LSP II"). I know Jessica through her LSP work, our LSP one-on-one meetings, and as my Teaching Assistant ("TA"). Jessica was my TA for the 2020 – 2021 school year.

LSP is the first-year legal research, reasoning and writing course. We met twice a week each semester for 15-weeks. It demands a huge in-and-out-of-class commitment to learn the foundational lawyering skills of legal research, reasoning, problem solving, critical thinking, writing, citing and editing. That's when I first met Jessica. In sum, Jessica is brilliant! Here are her performance highlights that fuel my assessment.

She writes in plain English; drafts clear law statements; and surgically applies law to facts to objectively, and persuasively advocate her client's position.

Jessica was a consistent top performer in my section of 24-students. She is proficient at both print sources, and electronic legal research. Jessica earned an "A" on her Comprehensive Research Exam. Her three (3)-graded research exercises were flawless resulting in an "A" on all three exercises. For writing assignments, Jessica researched primary legal authority that often went undiscovered by her peers. Her legal reasoning, and analyzing skills are unparalleled.

Jessica has inimitable organizing, citing, writing, editing, and rewriting skills. Her mental "ready access memory" processes information fast, and accurately. Resulting in a course grade of "A" in LSP I. In LSP II, Jessica drafted litigation documents including a Complaint, Pre-Trial Motion Brief, and Appellate Brief. Again, Jessica was a consistent top performer resulting in an "A" in LSP II.

Jessica meticulously set, met, and invariably exceeded her writing, and advocacy goals. Always correctly citing legal authority, and artfully writing cogent sentences and paragraphs.

Albeit Jessica made a seamless transition to the rigors of law school, her maximum optimum performance level is yet to be realized. That is because Jessica always improves upon her past performance. Three (3)-improvements noted to date are: (1) the way she organizes her ideas; (2) the breadth, depth, and confidence demonstrated in her legal reasoning; and (3) her super-tight prose, devoid of fluff words or ideas.

We met several times to discuss pending assignments. Each meeting was intellectually stimulating due to scope of her inquiries. She was well prepared with thoughtful questions. Two things emerged: (1) her comprehensive understanding of the senior attorney's assigned task, and (2) her perennial quest to discover logic gaps in her research, and reasoning inadvertently overlooked. Jessica's legal practice-ready skill sets includes: (1) an innate ability to locate primary legal authority; (2) the ability to synthesize her researched rules into a coherent rule structure; and (3) her syllogistic deductive reasoning advocating her client's position.

Being prepared is her *modus operandi.* She has an indefatigable work ethic.

Jessica is a trailblazer, and intellectual powerhouse! She is one of the finest students I have ever had the good fortune to teach. Jessica is erudite, articulate, kind, and personable. All housed within her impeccable character.

Jessica is Associate Editor, of Catholic University Law Review. She has a 3.477/4.0 law school GPA. She graduated from College of the Holy Cross, *cum laude*, May 2019. In May 2019, her article: Understanding NGOs and their Effectiveness through a Comparative Study of their Role in REDD+, was published in *Cross Works.* She is presently a Law Clerk at a Rockville, Maryland law firm. Before that, from May 2018 – August 2018, Jessica served as a judicial intern in Kings County Supreme Court Civil Term, Brooklyn, New York. She drafted bench memos, and briefed her judge on the pending docket issues.

As my TA, Jessica worked with 24 students guiding them on legal research, legal citations, and 1L survival skills. She graded all research assignments. My students' loved her.

Jessica follows instructions, goes the extra mile, and adjusts well to new challenges. She builds upon, and excels beyond her past performance. Once assigned a task, consider it done, performed correctly, and on time every time.

You now have a snap shot of Jessica's legal journey to date. So if being prepared, smart, professional, ethical, and competent is what you want, then Jessica is your next Judicial Clerk.

I recommend **Jessica Ann Russo** without reservation.

Sincerely,

/s/ Frederick E. Woods
Frederick E. Woods
Clinical Assistant Professor

June 09, 2021

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

Jessica Russo is one of those very special students who come along now and then. She is deeply engaged in her studies, passionate about the law, and extremely capable. Her legal analysis is excellent; her research and writing skills are very strong; and Jessica has the kind of lively intellectual curiosity and work ethic that will make her a wonderful member of our profession. I whole-heartedly recommend her to you for a position as a judicial law clerk.

I had the pleasure of having Jessica as a student in my Corporations class, and she is a member of the Compliance, Investigations and Corporate Responsibility Program that I direct. Jessica is unfailingly well prepared for her classes, and she frequently offers insightful comments in the course of class discussions. She is quick to grasp both complex concepts and practical consequences. Jessica is always polite, but she does not hesitate to raise questions and challenge others appropriately when her understanding differs from theirs. Jessica is also adept at making connections between the world outside the law school and her legal studies. She is the kind of student faculty members love to have in their classes.

In addition to excelling in her studies, Jessica finds time to engage in many different activities in the law school community. She is Associate Editor of the Catholic University Law Review and a Teaching Assistant for my colleague Professor Frederick Woods. She is also a member of the Law and Technology Student Association, a volunteer for Christian Legal Aid of DC, and an editor/reviewer for the People's Law Library. Jessica manages to do all of this while working part-time as a law clerk at a Maryland law firm. She is quite adept at managing her busy schedule and fulfilling her many commitments. In addition to her substantive knowledge and the research and writing skills she has acquired, Jessica's ability to manage her time will be a terrific asset in her legal career. On a more personal level, it is always a pleasure to talk with Jessica. She thinks deeply about legal issues, and she enjoys her studies and her work. She is bright and enthusiastic, and I can always count on her to offer interesting observations.

Before I began practicing law, I served as a law clerk to the Honorable Spotswood W. Robinson, III, then Chief Judge of the United States Court of Appeals for the District of Columbia Circuit. Working for Judge Robinson was truly a wonderful experience, and I encourage my best students to seek clerkship opportunities in the hope that they, too, will learn a great deal and make a contribution to our judicial system. I have urged Jessica to apply for a judicial clerkship because I am confident that she would make an excellent law clerk and a wonderful addition to any chamber's staff.

I have served as both a partner in the Washington, D.C. law firm of Williams & Connolly and as general counsel to a major academic health system and to Amtrak. In any of these capacities I would have been delighted to hire Jessica. I hope that you will seriously consider her as a candidate for a clerkship with you.

Please call me at (202)319-6073, or email me at duggin@law.edu, if I can provide any additional information or assistance. Thanks so much for considering Jessica.

Sincerely,

Sarah Helene Duggin
Professor of Law
Director, Compliance, Investigations &
Corporate Responsibility Program

JESSICA ANN RUSSO

625 Monroe Street NE #C-543, Washington, D.C. 20017 • russoj@cua.edu • (718) 594-4464

This writing sample was written for my Appellate Advocacy class.

No. 20-037

IN THE COURT OF APPEALS
STATE OF COLUMBUS

CHET GWYNN,

Defendant-Appellant

v.

STATE,

Prosecution-Appellee

ON APPEAL FROM THE CLAYTON COUNTY DISTRICT COURT
FOR THE STATE OF COLUMBUS

BRIEF FOR APPELLANT CHET GWYNN

Jessica Russo
CUA Law LLP

Counsel for Appellant

3600 John McCormack Rd NE
Washington, DC 20017
(718) 594-4464
russoj@cua.edu

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JURISDICTIONAL STATEMENT

With leave of the Clayton County District Court, Defendant-Appellant Chet Gwynn entered a conditional guilty plea on October 4, 2020. R. at 32. Mr. Gwynn filed his Notice of Appeal on December 3, 2020, making this appeal timely under Columbus Criminal Code § 902. R. at 33.

STATEMENT OF THE ISSUE

I. WHETHER DISTRICT COURT ERRED WHEN IT DENIED MR. GWYNN'S MOTION TO SUPPRESS HIS BLOOD-ALCOHOL TEST RESULTS OBTAINED AFTER OFFICER DONETTI ILLEGALLY ENTERED MR. GYWNN'S HOME WITHOUT A WARRANT FOR AN ALLEGED MISDEMEANOR OFFENSE WHERE THE HOT PURSUIT EXIGENT CIRCUMSTANCE EXCEPTION DID NOT APPLY.

STATEMENT OF THE CASE

A. Proceedings Below

The Grand Jury charged Defendant-Appellant Chet Gwynn with driving under the influence of alcohol in violation of Columbus Criminal Code § 501. R. at 2-3. Mr. Gwynn moved to suppress his blood-alcohol test results that Officer Donetti retrieved after entering Mr. Gwynn's home without a warrant. R. at 16–17. The trial court denied Mr. Gwynn's motion. R. at 28. Mr. Gwynn then entered a conditional guilty plea subject to this Court's ruling on the trial court's decision to deny his Motion to Suppress. R. at 26, 32. Mr. Gwynn filed a timely Notice of Appeal on December 3, 2020. R. at 33.

B. Statement of Facts

On December 7, 2019, Mr. Gwynn was driving his Ford F-150 on Oasis Avenue at around 11 p.m. while listening to the UC football game. R. at 6–7. Claytonville Police Officer

Donetti decided to follow Mr. Gwynn's vehicle after hearing Mr. Gwynn's radio and observing him honking his horn several times. R. at 15–16. However, Mr. Gwynn's radio was so low that Officer Donetti could not tell that Mr. Gwynn was specifically listening to the University of Columbus game. R. at 7, 10. At that point, Officer Donetti suspected Mr. Gwynn of two traffic infractions: violating Traffic Code § 271 for using his horn other than to "ensure the safe operation of the motor vehicle" and Traffic Code § 277 for "us[ing] . . . a sound system while driving which can be heard outside the vehicle from a distance of 40 feet or more." R. at 7.

When Mr. Gwynn turned right on Canyon Street, Officer Donetti followed him. R. at 7. Officer Donetti activated his police lights only after following Mr. Gwynn for about two miles. R. at 7. Officer Donetti later testified that at that time, he had "no other evidence of any other infractions of the law" other than suspected traffic violations. R. at 7–8, 10. Mr. Gwynn did not speed up, try to race away, or take evasive action when Officer Donetti activated his lights. R. at 10–11. Mr. Gwynn was traveling 20 miles per hour, "remain[ing] at a safe speed and c[oming] to a complete stop at his home." R. at 11. When Mr. Gwynn arrived at his home, he drove his car into his garage. R. at 8. Officer Donetti exited his police vehicle and followed Mr. Gwynn into the garage as the garage door was closing. R. at 8. Officer Donetti had neither Mr. Gwynn's permission nor a warrant to enter Mr. Gwynn's garage. R. at 12, 14. Clayton County has a procedure for telephone warrants, but Officer Donetti did not try to obtain one. R. at 14.

As Mr. Gwynn tried to enter his home from the garage, Officer Donetti stood in front of the door and blocked his path. R. at 8. Officer Donetti later testified that he believed Mr. Gwynn's gait was unsteady; he detected the smell of alcohol; and he observed that Mr. Gwynn's speech was slurred. R. at 8. However, Officer Donetti also admitted that he never saw Mr. Gwynn speak or walk prior to this exchange. R. at 14. Officer Donetti then conducted a

standardized field sobriety test, which indicated that Mr. Gwynn was under the influence of alcohol. R. at 9. Officer Donetti arrested Mr. Gwynn for driving under the influence of alcohol. R. at 9. Mr. Gwynn was then transported to Methodist Hospital for a blood-alcohol test, which revealed a blood-alcohol level of 0.23. R. at 9.

Mr. Gwynn filled a pre-trial Motion to Suppress Illegally Seized Evidence, urging the trial court to exclude his blood-alcohol test results at trial. R. at 21. Mr. Gwynn argued that Officer Donetti violated his Fourth Amendment rights because no exigent circumstances existed to justify Officer Donetti's warrantless entry into Mr. Gwynn's home. R. at 17. The trial court denied the Motion and later accepted a conditional guilty plea in which Mr. Gwynn reserved the right to appeal that ruling to this Court. R. at 32.

SUMMARY OF THE ARGUMENT

Officer Donetti violated Mr. Gwynn's Fourth Amendment rights because the exigent circumstances exception to the Fourth Amendment warrant requirement did not justify Officer Donetti's warrantless entry into Mr. Gwynn's home. First, the State failed to prove that the hot pursuit exception to the warrant requirement authorized Officer Donetti to enter Mr. Gwynn's home without a warrant. Second, Fourth Amendment warrants are assessed on a case-by-case evaluation of reasonableness to protect American civilians in their homes and police officers on duty. The State's unsupported categorical misdemeanor proposal, authorizing law enforcement to enter homes without a warrant in pursuit of people suspected of misdemeanors, calls upon this Court to overturn decades of Supreme Court precedent and ignore the Framers' intention to have neutral and detached magistrates, not partial and interested police officers, make warrant determinations. Therefore, the decision of the District Court of Clayton County must be

reversed, and the case must be remanded for reconsideration without the introduction of Mr. Gwynn's blood-alcohol test results.

STANDARD OF REVIEW

The Clayton County District Court's ruling denying Mr. Gwynn's Motion to Suppress his blood-alcohol test results at trial is a legal conclusion that this Court reviews de novo. United States v. Schmidt, 403 F.3d 1009, 1013 (8th Cir. 2005).

ARGUMENT

I. THE DISTRICT COURT ERRED WHEN IT DENIED MR. GWYNN'S MOTION TO SUPPRESS HIS BLOOD-ALCOHOL TEST RESULTS OBTAINED AFTER OFFICER DONETTI ILLEGALLY ENTERED MR. GYWNN'S HOME WITHOUT A WARRANT FOR AN ALLEGED MISDEMEANOR OFFENSE WHERE THE HOT PURSUIT EXIGENT CIRCUMSTANCE EXCEPTION DID NOT APPLY.

Because the State failed to introduce evidence of circumstances sufficient to justify Officer Donetti's warrantless entry into Mr. Gwynn's home, the State violated Mr. Gwynn's Fourth Amendment rights. Two reasons support the conclusion that the trial court erred in denying Mr. Gwynn's motion to suppress evidence seized as a result of that illegal search. First, the State failed to establish that Officer Donetti was in hot pursuit of Mr. Gwynn to justify Officer Donetti's warrantless entry into Mr. Gwynn's home. Second, the Fourth Amendment requires police officers to obtain a warrant before entering a person's home to ensure that warrantless entries are assessed by a neutral and detached magistrate on a case-by-case evaluation of reasonableness. Accordingly, this Court should reverse the decision of the District Court of Clayton County and remand the case for reconsideration without the introduction of unconstitutionally seized evidence.

A. Because the State Failed to Introduce Evidence that Officer Donetti was in Hot Pursuit of Mr. Gwynn, the Trial Court Erred in Ruling that Mr. Gwynn's Alleged Misdemeanor Offense Qualified as an Exigent Circumstance Sufficient to Allow Officer Donetti to Enter Mr. Gwynn's Home Without a Warrant

Officer Donetti's warrantless entry into Mr. Gwynn's home was presumptively unreasonable. Indeed, the "touchstone of the Fourth Amendment is reasonableness." Brigham City, Utah v. Stuart, 547 U.S. 398, 398 (2006). Because "physical entry of a home is the chief evil against which the wording of the Fourth Amendment is directed," the police need a valid warrant to enter a home, or the officer's entry into someone's home without such warrant is presumptively unreasonable. Payton v. New York, 445 U.S. 573, 586 (1980) (citing United States v. United States Dist. Court for E. Dist. of Mich., S. Div., 407 U.S. 297, 313 (1972)). Officer Donetti did not have a warrant when he entered Mr. Gwynn's home. R. at 12. Since Officer Donetti entered Mr. Gwynn's home without a warrant, Officer Donetti's warrantless entry is presumptively unreasonable.

The State incorrectly asserts the exigent circumstances exception to the Fourth Amendment warrant requirement as a last ditch effort to justify Officer Donetti's warrantless entry. The application of the exigent circumstances exception to allow entry into a home without a warrant is only reserved for situations when (1) "an emergency leaves police insufficient time to seek a warrant," and (2) the alleged offense committed by the defendant is serious. Birchfield v. North Dakota, 136 S. Ct. 2160, 2173 (2016); McDonald v. United States, 335 U.S. 451, 455 (1948); Mascorro v. Billings, 656 F.3d 1198, 1209 (10th Cir. 2011) (referencing Welsh v. Wisconsin, 466 U.S. 740, 750 (1984)). The State has the heavy burden of "demonstrat[ing] exigent circumstances that overcome the presumption of unreasonableness" when a police officer enters a person's home without a warrant. Welsh v. Wisconsin, 466 U.S. at 750. The government must prove that the "situation makes the needs of law enforcement so compelling

that warrantless search is objectively reasonable under the Fourth Amendment." Mincey v. Arizona, 437 U.S. 385, 394 (1978). The State has failed to meet both of the exigent circumstance standards because there was no emergency, and Mr. Gwynn's alleged offenses were not serious.

First, the State erroneously argues that there was an emergency sufficient to invoke the exigent circumstances doctrine in this case. Under McDonald v. United States, the exigent circumstances exception should be used only for "'grave emergenc[ies]." 335 U.S. at 455. Officer Donetti only had evidence of Mr. Gwynn's alleged excessive honking and noise, traffic infractions, and failure to pull over after a signal from law enforcement, a misdemeanor, when he entered Mr. Gwynn's home without a warrant. R. at 8. Officer Donetti's concerns about disturbing neighbors and instigating disputes between drivers as a result of Mr. Gwynn's honking and noise were eradicated when Mr. Gwynn exited his vehicle and entered his home. R. at 13, 15. Two mere traffic infractions and a misdemeanor is simply insufficient to satisfy the State's heavy burden of showing that exigent circumstances existed to justify Officer Donetti's warrantless entry. Because no grave emergency existed to authorize Officer Donetti's warrantless entry, Officer Donetti violated Mr. Gwynn's Fourth Amendment rights.

Second, the State improperly argues that Mr. Gwynn's suspected minor traffic violations were serious enough to justify Officer Donetti's warrantless entry. The Supreme Court has established that the use of the exigent circumstances exception to justify warrantless entries for minor offenses must be "rarely [] sanctioned," "severely restricted," invoked in the "'rarest' of cases," permitted only in the "most extraordinary of circumstances," and reserved only for "serious[] . . . offense[s]". Mascorro, 656 F.3d at 1208–1209 (referencing Welsh, 446 U.S. at 741); Stanton v. Sims, 571 U.S. 3, 8 (2013) (citing United States v. Johnson, 256 F.3d 895, 908

n.6 (9th Cir. 2001)); Welsh, 466 U.S. at 750, 753. The Court has applied the exigent circumstances exception only in hot pursuit cases involving a fleeing *felon*. United States v. Santana, 427 U.S. 38, 41 (1976) (heroin distribution); Warden, Md. Penitentiary v. Hayden, 387 U.S. 294, 296; 299 (1967) (armed robbery). The Court has never held that a police officer can enter a home solely on an officer's pursuit of a *misdemeanant* because misdemeanors "involve no violence or threats of it," making the "presumption of unreasonableness [] difficult to rebut." Welsh, 466 U.S. at 750–51 (citing McDonald, 335 U.S. at 460 (Jackson, J., concurring)). A "facts-intensive totality of the circumstances" test, taking into account the "gravity of the underlying offense," is used to decide if a warrantless entry was reasonable. Minnesota v. Olson, 495 U.S. 91, 100 (1990); Missouri v. McNeely, 569 U.S. at 149, 158. The State has failed to establish that Mr. Gwynn's suspected minor traffic violations were serious enough to satisfy the Supreme Court's second high exigency standard.

Mr. Gwynn's alleged offenses were not serious. Before entering Mr. Gwynn's home without a warrant, Officer Donetti had evidence only of honking excessively, playing the radio loudly and failing to pull over immediately. R. at 8. Those minor traffic offenses are hardly serious enough to meet the Supreme Court's high standard for justifying a police officer's warrantless entry into a person's home.

A ruling by the United States Court of Appeals for the Ninth Circuit underscores the State's error in characterizing Mr. Gwynn's traffic violations as serious offenses. In Mascorro, the officer made a warrantless entry into the defendant's home, citing the hot pursuit exception, after the defendant allegedly committed two "nonviolent misdemeanors," a traffic offense, and eluding an officer. 656 F.3d at 1202–03, 1205. The Tenth Circuit held that hot pursuit did not justify the officer's warrantless entry because "[n]o reasonable officer would have thought

pursuit of a minor for a mere misdemeanor traffic offense constituted the sort of exigency permitting entry into a home without a warrant." Mascorro, 656 F.3d at 1207, 1209–10. Central to the Court's reasoning was the fact that the defendant posed little to no risk of escaping or flight; there was no concern for imminent destruction of evidence; and the offense was minor. Id. Like the officer in Mascorro, before entering Mr. Gwynn's home without a warrant, Officer Donetti suspected him of nothing more serious than traffic offenses. R. at 3, 12. Mr. Gwynn also posed no risk of escaping or flight since Officer Donetti followed Mr. Gwynn home, enabling Officer Donetti to know the location of Mr. Gwynn's residence. R. at 11. Because the State failed to show that Mr. Gwynn's alleged offenses were serious enough to meet the Supreme Court's high exigency standard, this Court must reject the State's theory that hot pursuit justified Officer Donetti's warrantless entry.

The Supreme Court has established police officers need a warrant to enter a person's home except in "only a few specifically established and well-delineated exceptions": (1) hot pursuit of a fleeing felon, (2) imminent destruction of evidence,[1] (3) risk of danger to self or others, (4) prevention of a suspect's escape, and (5) rendering emergency assistance. Katz v. United States, 389 U.S. 347, 357 (1967); Welsh, 466 U.S. at 750. There is a much higher standard for police officers to successfully invoke the hot pursuit exception to justify warrantless

[1] The State mistakenly attempts to have the Court instead look at alleged drunk driving violation. However, in making its exigency argument, the State ignores the precedent set in United States v. Johnson, 256 F.3d 895, 907 (9th Cir. 2001). As the United States Court of Appeals for the Ninth Circuit held, an exigency turns on the "moment the officer makes the warrantless entry," *not* "once they are inside." Id. The State's use of Mr. Gwynn's alleged physical condition as an after the fact justification for Officer Donetti's illegal entry into Mr. Gwynn's home is erroneous because Officer Donetti's purported observation of Mr. Gwynn's alleged condition occurred only *after* his unconstitutional entry into Mr. Gwynn's home. R. at 8, 12. Thus, the State's reliance on Missouri v. McNeely, 569 U.S. 141, 142 (2013), holding that "natural dissipation of alcohol in the blood stream" may constitute an exigency but "it does not do so categorically," is inapplicable to the facts of this case.

entries for mere misdemeanor offenses: There must be "additional circumstances," namely imminent destruction of evidence, risk to officers or others, or prevention of a suspect's escape. Mascorro, 656 F.3d at 1209. See Bledsoe v. Garcia, 742 F.2d 1237, 1241 (10th Cir. 1984) (holding that there was a hot pursuit of misdemeanant since the hot pursuit was coupled with the prevention of a suspect's escape). In this case, the State attempts to justify Officer Donetti's warrantless entry under the hot pursuit exception. R. at 16. However, an analysis of the caselaw and the record before the trial court demonstrate the inapplicability of that narrow exception.

Despite the State's attempt to misrepresent the circumstances of this case as hot pursuit, Officer Donetti's pursuit of Mr. Gwynn was lukewarm at best. Thus, the hot pursuit exception cannot justify Officer Donetti's warrantless entry into Mr. Gwynn's home. When Officer Donetti turned on his police vehicle's lights, Mr. Gwynn was only traveling 20 mph. the entire trip. R. at 11. Officer Donetti admitted that Mr. Gwynn did not speed, try to race away, or take any evasive action. R. at 10–11. Mr. Gwynn "remained at a safe speed and came to a complete stop at his home." R. at 11. Following a vehicle driving steadily at 20 mph into the person's driveway can hardly be categorized as hot pursuit. Aware that Officer Donetti illegally entered Mr. Gwynn's home, the State attempts to argue the exigent circumstances exception as a post-hoc reason to justify Officer Donetti's warrantless entry without sufficient evidence.

Furthermore, in making its exigency argument to this Court, the State fails to acknowledge a key distinction between this case and the few decisions in which the Supreme Court has applied the hot pursuit doctrine to justify a warrantless entry into suspects' homes. For example, in United States v. Santana, the police had probable cause to believe that the defendant had distributed heroin. 427 U.S. at 41. Similarly, the officers in Warden, Md. Penitentiary v. Hayden were in hot pursuit of a person suspected of armed robbery. 387 U.S. at 297. In this

case, however, Mr. Gwynn allegedly committed only one misdemeanor offense, and two traffic infractions. R. at 3, 12. Because Santana and Warden are inapplicable to the facts of this case, the Court must disregard those cases when making its determination to suppress Mr. Gwynn's blood-alcohol test results.

A ruling by the Supreme Court of Florida emphasizes the trial court's error in denying Mr. Gwynn's Motion to Suppress his blood-alcohol test. In State v. Markus, 211 So. 3d 894, 897 (Fla. 2017), when an officer approached the defendant to ask him to empty his beer, the officer smelled marijuana in the defendant's vicinity. After the defendant threw a cigarette in the street, the officer attempted to detain him, but the defendant retreated into his home. Id. The officer followed the defendant into his home without a warrant, citing the hot pursuit exception, even though the cigarette was on the ground. Id. The Court held that the officer was not in hot pursuit because the defendant did not pose any danger since he had no hostages or "threat of weapons," did not actively evade the officer, and dropped the evidence of the alleged offense in the street. Id. Like the defendant in Markus, Mr. Gwynn also did not pose a danger since he did not have weapons, exited his vehicle, and remained in Officer Donetti's vision before entering the garage. R. at 8. Thus, like the officer in Markus, Officer Donetti was also not in hot pursuit to authorize a warrantless entry into Mr. Gwynn's home, thereby resulting in an illegal search.

Since Officer Donetti's search was illegal, Supreme Court caselaw mandates that Mr. Gwynn's blood-test results be excluded from the case reconsideration. Evidence illegally obtained through an unconstitutional search cannot be used against a defendant in a criminal case. Hudson v. Michigan, 547 U.S. 586, 590 (2006). Because Mr. Gwynn's blood-alcohol test results were obtained through Officer Donetti's illegal search, this case must be remanded for reconsideration without the introduction of unconstitutionally seized test results.

B. The Fourth Amendment Requires Officers to Obtain a Warrant Before Entering a Person's Home to Ensure that Warrantless Entries are Assessed by a Neutral and Detached Magistrate on a Case-By-Case Evaluation of Reasonableness

The Fourth Amendment mandates that police need a warrant before entering a person's home. The Supreme Court has made clear that the "[a]t the very core [of the Fourth Amendment] stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion." Payton v. United States, 445 U.S. 573, 590 (1980) (citing Silverman v. United States, 365 U.S. 505, 511 (1961)). Because of the heightened Fourth Amendment protections afforded to the home, an officer cannot cite "inconvenience" to account for a warrantless entry into a person's home. Johnson v. United States, 333 U.S. 10, 15 (1948). Officer Donetti violated Mr. Gwynn's Fourth Amendment rights because Officer Donetti had time to secure a warrant before entering Mr. Gwynn's home and did not attempt to obtain one.

The State would have been in no way prejudiced by Officer Donetti either obtaining a telephone warrant or waiting until the next day to acquire a warrant for Mr. Gwynn's alleged traffic offenses. Many states that recognize telephone warrants allow officers to provide judges with information "remotely through various means, including telephonic or radio communication, electronic communication such as e-mail, and video conferencing" in order to procure a warrant to enter someone's home. Missouri v. McNeely, 569 U.S. at 154. Thus, Officer Donetti had every opportunity to obtain an electronic warrant because Columbus had a method for police officers to seek telephone warrants – a procedure with which Officer Donetti was readily familiar. R. at 14. Furthermore, as other courts have observed, telephone warrants often require little turnaround time compared to "traditional means of appearing before a magistrate." See United States v. McEachin, 670 F.2d 1139, 1146 (D.C. Cir. 1981); R. at 14. There was no risk to Officer Donetti to follow the established procedure for obtaining a warrant.

R. at 14. He simply chose to disregard the process. R. at 14. Indeed, without jeopardizing the State's action against Mr. Gwynn for traffic violations, Officer Donetti could have waited until the next day to obtain a warrant since he had Mr. Gwynn's license plate number and home address. R. at 8. Because Officer Donetti had every opportunity to comply with the Framers' express mandate that the police must seek a warrant before violating the sanctity of a citizen's home, the State can offer no reasonable justification for the constitutional violation in this case.

The Framers designed the Fourth Amendment to guarantee that a "neutral and detached magistrate" decides whether an officer can enter a home "instead of it being judged by the officer engaged in the often competitive enterprise of ferreting out crime." Johnson, 333 U.S. at 14. They witnessed the King's subjects abuse general warrants to enter people's homes without a particular reason. State v. Dugan, 276 P.3d 819, 825 (Kan. App. 2d 2012). The Fourth Amendment is the way to safeguard individuals' privacy interests from the abuse of "unchecked governmental authority" the Framers endured from the British Empire. Id.

For this reason, a neutral and detached magistrate must continue to make warrant determinations to protect individuals' Fourth Amendment rights. The Fourth Amendment's categorical rule to obtain a warrant before entering a person's home keeps power in the hands of neutral and detached magistrates as the Framers intended. The rule requires individuals with expertise in Fourth Amendment jurisprudence to judge whether the evidence is sufficient to establish probable cause before the officer can breach the sanctity of the home. To give police officers the power to adjudicate on their own accord whether they have probable cause to enter a person's home without a warrant ignores the Framers' fundamental purpose in enacting the Fourth Amendment.

Knowing it cannot prevail on the Supreme Court's standard for exigency, the State asks this Court to ignore over 30 years of Supreme Court Fourth Amendment caselaw and apply a bright-line "categorical" rule authorizing police officers to enter homes without a warrant in pursuit of people suspected of misdemeanors. The Supreme Court has always recognized that police officers need to obtain a warrant before entering a person's home, and that exigent circumstances are assessed on a case-by case evaluation of reasonableness. Brigham City, Utah, 547 U.S. at 398. The Supreme Court has also made clear that, "[w]hile the desire for a bright-line rule is understandable, the Fourth Amendment will not tolerate adoption of an overly broad categorical approach that would dilute the warrant requirement in a context where significant privacy interests are at stake." McNeely, 569 U.S. at 158. Since the Fourth Amendment reasonableness standard relies heavily upon a fact-intensive inquiry, the Supreme Court's established standard is incompatible with the State's proposal. The State's categorical approach would automatically permit an officer to enter a home to pursue a *misdemeanant* without a case-by-case evaluation of reasonableness if the officer believed that there were exigent circumstances present to justify a warrantless entry. Because the State asks this Court to abandon decades of Supreme Court caselaw, the Court must reject the State's proposed categorical approach.

Even the State's reliance on other state supreme court cases to justify its categorical rule is misplaced. These cases are irrelevant since they involve an officer's hot pursuit of fleeing suspect. In this case before this Court, Officer Donetti was not in hot pursuit of Mr. Gwynn as established in I. A. Mr. Gwynn was traveling 20 miles per hour, "remain[ing] at a safe speed and c[oming] to a complete stop at his home." R. at 11. Because those cases are inapplicable to the facts of this case, the Court must disregard those cases when making its determination to reject the State's proposed categorical misdemeanor approach.

Moreover, the State's proposed per se approach might actually pose greater risk to police officers themselves and indeed individuals in their homes. When police officers enter the home, the occupants may perceive the officers as intruders and thus are more likely to respond to the alleged threat with violence in defense of their home and family. As a result, the occupants may injure the officer, especially when an officer enters the home at night as Officer Donetti did in this case. See Thompson v. City of Florence, 2019 WL 3220051, at *3–4 (N.D. Ala. July 17, 2019) (noting that the police officer in plain clothes was sent to the hospital after a warrantless entry in pursuit of a defendant who allegedly committed a public urination offense). Since the State's categorical approach runs the risk of harming the officers the State seeks to protect, the Court must reaffirm the Fourth Amendment warrant requirement to maintain officer safety.

In the same way, the State's request for a bright-line rule authorizing the police to pursue suspected misdemeanors into their home threatens to put family members and other innocent bystanders at risk. When executing lawfully issued warrants, officers have the time to enlist appropriate backup and devise a plan to reduce the risk of violence. However, when officers forcibly entering the home in the heat of the moment and without a warrant in pursuit of a suspected traffic offender, they may escalate the confrontation in a way that can end in tragedy. For instance, in Mascorro v. Billings, the officer forcibly entered the defendant's home without a warrant for two "nonviolent misdemeanors," a traffic offense, and eluding an officer after the defendant failed to pull over when the officer activated his police lights and ran into his family's home. 656 F.3d at 1202–03. The officer pointed his gun at the defendant's head and pepper sprayed and assaulted the defendant's family. Id. See also Carroll v. Ellington, 800 F.3d 154, 162 (5th Cir. 2015) (involving a suspect's death after an officer beat and tased the suspect during a warrantless entry for "possibly fidgeting" with a mailbox); Estate of Sauceda v. City of N. Las

Vegas, 380 F. Supp. 3d 1068, 1074 (D. Nev. 2019) (concerning a person's death after the officer shot the person nine times during a warrantless entry after the individual ran into his residence). Because the State's request would only increase the potential danger for police officers and individuals in their homes, this Court must decline to adopt the State's proposal.

Law enforcement has had an effective and clear categorical rule to enter a home since 1791: Obtain a warrant before entering someone's home. Of course, if there is truly a "grave emergency" authorizing the officer to enter a home without a warrant, the officer is still permitted to assert an exigent circumstances exception to circumvent the Fourth Amendment's warrant requirement. The Fourth Amendment's warrant requirement principally ensures that police officers do not enter a home without a warrant unnecessarily at the expense of violating an individual's Fourth Amendment rights as Officer Donetti did to Mr. Gwynn in this case.

CONCLUSION

For the foregoing reasons, Defendant-Appellant Chet Gwynn asks this Court to reverse the decision of the District Court of Clayton County and remand the case for reconsideration without the introduction of unconstitutionally seized evidence.

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DATED: April 1, 2021

Applicant Details

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Middle Initial	**R.**
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Address	**Address** Street **4016 Lake Underhill Rd, Apt A** City **Orlando** State/Territory **Florida** Zip **32803** Country **United States**
Contact Phone Number	**(716)775-2043**

Applicant Education

BA/BS From	**Niagara University**
Date of BA/BS	**May 2016**
JD/LLB From	**William & Mary Law School** **http://law.wm.edu**
Date of JD/LLB	**May 13, 2019**
Class Rank	**25%**
Law Review/Journal	**Yes**
Journal(s)	**William & Mary Bill of Rights Journal**
Moot Court Experience	**No**

Bar Admission

Admission(s)	**New York**

Prior Judicial Experience

Judicial Internships/ Externships	**Yes**
Post-graduate Judicial Law Clerk	**Yes**

Specialized Work Experience

Recommenders

Lederer, Fredric I.
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This applicant has certified that all data entered in this profile and any application documents are true and correct.

August 25, 2020

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige, Jr.
U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

I am a civil litigation attorney in Buffalo, NY and a graduate of William & Mary Law School. I loved my time in Virginia and hope to return there in the future. Through my externships with state and local courts, as well as discussions with court clerks and attorneys, I have solidified my desire to pursue a career serving the judiciary and the community. In furtherance of this, I am applying for a position as a Law Clerk in your chambers.

My strong research and writing ability gained through legal practice, internships, and coursework will prove to be an invaluable resource in your chambers. While externing in the chambers of Justice Teresa M. Chafin, now a justice on the Supreme Court of Virginia, I prepared bench memoranda and made recommendations on civil and criminal appeals. Through a fellowship with the Center for Legal and Court Technology I studied and wrote on the integration of remote technology in legal practice and on institutional racial bias reflected in AI-driven risk assessment tools. I have also written on a variety of topics independent of my fellowship, with a special emphasis on the intersection of law, psychology, and neuroscience. Beyond completing my own research, I reviewed the work of others by analyzing the veracity of citations in journal articles as a member of the Bill of Rights Journal. I also served on the editorial board as the journal's Technical Coordinator. Ultimately, completing legal research and analysis is my passion and I often spend my personal time pursuing this interest.

Enclosed for your consideration are my resume, law grade sheet, writing sample, and letters of recommendation. I would be grateful for the opportunity to interview and discuss my qualifications for this clerkship. Thank you for your consideration of my application.

Respectfully,

Kelsey Ruszkowski

KELSEY R. RUSZKOWSKI
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EDUCATION

William & Mary Law School, Williamsburg, Virginia
J.D., 2019, *cum laude*, top 22%
Honors: ***William & Mary Bill of Rights Journal***, Technical Coordinator
Public Service Award; CALI Award for Law & Neuroscience; Leadership Institute Fellow

Niagara University, Niagara Falls, New York
B.A., 2016, *summa cum laude*, Political Science, minors in Psychology, Philosophy, Law & Jurisprudence
Honors: Dean's List; Phi Alpha Delta Society of Scholars; Student Achievement Award

EXPERIENCE

Gibson, McAskill & Crosby, LLP, Buffalo, New York, August 2019 to Present
Associate Attorney. Specialize in asbestos litigation and personal injury matters. Draft motions and memoranda, conduct legal research, attend depositions and status conferences, and review records and expert reports.

Center for Legal and Court Technology, Williamsburg, Virginia, August 2016 to May 2019
Fellow. Design, conduct, and draft comprehensive report on an empirical study concerning the relational challenges of remote communication in legal practice. Analyze judicial analytics tools used to predict recidivism for racial bias.

Court of Appeals of Virginia, Lebanon, Virginia (remote), January 2019 to April 2019
Judicial Extern. Research and draft advisory legal memoranda on civil and criminal appeals before the Court.

Hurwitz & Fine, PC, Buffalo, New York, May 2018 to August 2018
Summer Associate. Draft and review motions. Research applicable case law, statutes, and regulations in a variety of subject matters including labor law, commercial litigation, wrongful death, HIPPA disclosures, defamation, premises liability, tribal law, and insurance coverage.

Open Development Mekong, Cambodia (remote), January 2018 to May 2018
Student Researcher. Draft policy brief on current copyright and licensing law in Cambodia concerning open access to educational resources. Compile a guide to open access law for Cambodian citizens and policymakers.

National Center for State Courts, Williamsburg, Virginia, January 2018 to March 2018
Extern. Complete research on absolute and comparative jury disparity levels. Code data for study on judicial misconduct and bias. Research state procedural requirements for juries.

United States Attorney's Office, Buffalo, New York, May 2017 to August 2017
Law Clerk. Complete research and draft memoranda for civil defense and criminal prosecution in cases involving environmental contamination, contracts, medical malpractice, labor trafficking, takings, and tax fraud. Attend court proceedings and witness interviews. Interact with various government agencies at task force meetings and case strategy sessions.

Lancaster Town Court, Lancaster, New York, May 2016 to August 2016
Judicial Intern. Assist The Honorable Jeremy Colby by reviewing case files and assessing fines. Attend court proceedings and mediations.

BAR ADMISSION

State of New York, 2020

PROFESSIONAL ASSOCIATIONS

New York State Bar Association
Bar Association of Erie County
Women's Bar Association of the State of New York
WNY Trial Lawyers Association

PUBLICATIONS

Kelsey R. Ruszkowski & Samuel J. Blanton, *Using Remote Technology in Legal Practice: Attorney-Client and Attorney-Staff Relationships*, NYSBA, June 4, 2020, https://nysba.org/using-remote-technology-in-legal-practice-attorney-client-and-attorney-staff-relationships.

Kelsey R. Ruszkowski, *Defining Sex-Based Discrimination Amongst Strife Between the Justice Department and the EEOC*, 19 INT'L J. DISCRIMINATION & L. 200 (2019).

Taylor Treece & Kelsey Ruszkowski, *Milestone in AI: Charter on Ethics Regarding Use of AI by Judicial Systems Released by Council of Europe*, Center for Legal & Ct Tech., Oct. 11, 2019, https://legaltechcenter.openum.ca/files/sites/159/2019/04/Treece-Ruzkowski-Milestone-in-AI-Charter-on-Ethics.pdf.

Kelsey Ruszkowski
William & Mary Law School
Cumulative GPA: 3.5

Fall 2016

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Lawyering Skills I	Megan Zwisohn	P	1	
Criminal Law	Adam Gershowitz	B	4	
Legal Research & Writing I	Jennifer Franklin	B+	2	
Torts	James Stern	A-	4	
Civil Procedure	Vivian Hamilton	B+	4	

Spring 2017

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Legal Research & Writing	Jennifer Franklin	B+	2	
Property	Lynda Butler	B+	4	
Lawyering Skills	Megan Zwisohn	P	2	
Constitutional Law	Neil Devins	B	4	
Contracts	Nathan Oman	A-	4	

Fall 2017

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Advanced Writing and Appellate Practice	Alice Armstrong	B+	2	
Law and Neuroscience	Peter Alces	A	3	Top grade in class
Land Use Control	Lynda Butler	A	3	
Sales	Peter Alces	B+	3	
Professional Responsibility	Douglas Miller	A	2	
Bill of Rights Journal	Neil Devins	P	1	

Spring 2018

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Law and Neuroscience Independent Writing	Peter Alces	A	2	
Judicial Externship	Paula Hannaford-Agor, Jennifer Elek	P	2	
Bill of Rights Journal	Neil Devins	P	1	
Products Liability	John Epps	B	3	
National Security Law Practice	Louis Rothberg, Giovanna Cinelli, Kenneth Nunnenkamp	P	1	
Intellectual Property	James Stern	B	3	

Advanced International Applied Research	Christie Warren	B	2	
Criminal Procedure	Paul Marcus	P	3	

Fall 2018

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Supreme Court Seminar	Neil Devins	A-	3	
Electronic Discovery	Andrea D'Ambra	B+	2	
Business Associations	Eric Kades	B	4	
Evidence	Mason Lowe	A	3	

Spring 2019

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Judicial Externship	The Honorable Teresa Chafin	P	3	
Planning a Chapter 11 Filing	Jeffrey Schlerf	P	1	
European Union Law and Politics	Jose de Areilza	B+	1	
Complex Transactions in Regulated Industries	David Sella-Villa	P	1	
Independent Legal Writing	Frederic Lederer	A	2	Paper entitled: Judicial Bias and Uncertainty During Discovery Encourages Litigant Cooperation
Congressional Investigative Power	Stanley Brand	P	1	
Civil Litigation Responses to Acts of International Terrorism	Steven Perles	P	1	
Independent Legal Writing	Peter Alces	A	2	Paper entitled: Genetic Predisposition to Criminality: Methods, Genes, and the Environment

Grading System Description
"A+" (4.3), "A" (4.0), "A-" (3.7)
"B+" (3.3), "B" (3.0), "B-" (2.7)
"C+" (2.3), "C" (2.0), "C-" (1.7), "D" (1.0) and
"F" (fail -- 0 quality points).

Professors can also use "Standard Pass-Fail" grading

A single grade of "A+" may (but need not) be awarded in classes of 30 or more students

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August 26, 2020

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige, Jr.
U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

Ms. Kelsey Ruszkowski, a recent William & Mary graduate, has asked me to submit a letter of recommendation in support of her application to serve as one of your law clerks. I am happy to do so.

Kelsey was a student member of our Center for Legal and Court Technology (CLCT) staff. CLCT, previously the Courtroom 21 Project, works world-wide to improve the administration of justice through appropriate technology. It is a joint initiative of our law school and the National Center for State Courts. Kelsey was one of only twelve outstanding J.D. students' hand-chosen from the entire first year class of approximately two hundred and thirty to work with CLCT as Fellows. I often worked with her on a daily basis.

Kelsey was in charge of experimental design and overall project supervision for a Canadian government funded research evaluation of remote legal representation in a small law firm. We were testing to determine whether modern day communications technology permitted small firm lawyers to communicate with clients, colleagues, and staff. Kelsey brought to this project not only her past academic psychology experience, but also her skills and personality. In her third year, Kelly wrote an excellent publishable paper, Judicial Bias and Uncertainty in Discovery Encourages Litigant Cooperation.

You have Kelsey's resume and academic details. I can report that Kelsey is very bright, highly responsible, and quietly very productive. What Kelsey takes on, she accomplishes. She does so with a particularly delightful personality that encourages her peers and supervisors to work with her happily and successfully.

William & Mary believes that successful lawyers should also give back to society, and we prize the concept of the "citizen lawyer." As her resume reflects, for eight years Kelsey developed a comprehensive food bank. I anticipate that post-graduation Kelsey will also seek to serve the public. A judicial clerkship will help Kelsey do that.

Kelsey would be an asset to your chambers. I am happy to recommend her.

Respectfully,

/s/

Fredric I. Lederer

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WRITING SAMPLE

The following writing sample was prepared for a slip and fall case associated with an injury sustained while playing basketball at a jail, arguing on behalf of the Defendants. Plaintiff argues that Defendants violated their duty of reasonable care by failing to ensure that the court flooring was free from defect or slick conditions. Defendants argue that even if there was a dangerous condition, which there is no evidence to support that assertion, Plaintiff assumed the risk of injury. Defendants also argue that they satisfied their duty of reasonable care given that there is no evidence of a dangerous condition and that they had not notice of or time to remedy such condition. The brief was filed in a New York State Court and follows the citation style required by those courts. Party names, witness names, and identifying locations have been redacted and the statement of facts has been removed. This sample is submitted with the permission of the attorney it was prepared for and is substantially my own work.

PRELIMINARY STATEMENT

Defendants, County of XXXX, New York ("XXXX County") and the XXXX County Sheriff's Department ("Defendants") submit this Memorandum of Law in support of its motion for summary judgment pursuant to CPLR § 3212 dismissing the claims of Plaintiff on the grounds that Plaintiff assumed the risk of an injury from falling while engaged in a recreational activity. This application also seeks summary judgment on the grounds that Defendants did not breach their duty of reasonable care to Plaintiff and are not liable for any damages in connection with Plaintiff's fall on March 2, 2010 at the XXXX County Jail located at XXXX in City of XXXX, County of XXXX and State of New York.

SUMMARY JUDGEMENT STANDARD

It is well-settled that a party moving for summary judgment must make a prima facie showing of their entitlement to judgment as a matter of law, offering sufficient evidence to demonstrate the absence of any triable issues of fact (*Zuckerman v City of New York*, 49 NY2d 557, 562, 404 NE2d 718, 719-20, 427 NYS2d 595, 597-98 [1980]). "When a movant has set forth evidentiary facts sufficient to entitle that party to judgment as a matter of law, the burden is shifted to the opposing party to come forward with proof in evidentiary form to show the existence of genuine triable issues of fact" (*Mahar v Mahar*, 111 AD2d 501, 502, 488 NYS2d 526, 528 [3d Dept 1985]).

Additionally, a party in opposition to a motion for summary judgment must assemble and lay bare affirmative proof to establish that the matters alleged are real and capable of being established upon a trial (*see Zuckerman*, 49 NY2d at 562, 404 NE2d at 719-20, 427 NYS2d at 597-98; *Chem. Bank v Queen Wire & Nail, Inc.*, 75 AD2d 999, 1000, 429 NYS2d 100, 102 [4th Dept 1980]). "Mere conclusory assertions, devoid of evidentiary facts, are insufficient for this purpose,

as is reliance upon surmise, conjecture or speculation." (*Smith v Johnson Prods., Co.*, 95 AD2d 675, 676, 463 NYS2d 464, 466 [1st Dept 1983]; *see also Eddy v Tops Friendly Mkts.*, 91 AD2d 1203, 1203, 459 NYS2d 196, 197-98 [4th Dept 1983], *aff'd,* 59 NY2d 692, 450 NE2d 243, 463 NYS2d 437 [1983]).

LEGAL ARGUMENTS

I. THE DOCTRINE OF PRIMARY ASSUMPTION OF RISK BARS PLAINTIFF'S COMPLAINT

The Court of Appeals has held that the primary assumption of risk doctrine may act as a complete defense to tort recovery in cases involving recreational activities that are so inherently dangerous as to negate any duty of care on the part of the defendant (*Custodi* v *Town of Amherst,* 20 NY3d 83, 87 [2012]). Assumption of risk is a principle of no duty, or no negligence, thereby denying the existence of any underlying cause of action (*Morgan v State*, 90 NY2d 471, 485 [1997]). Because there is no breach of duty by the defendant, there is no conduct which can be compared to any misconduct on the part of the plaintiff (*id.*).

Athletic and recreational pursuits that take place at a designated venue are qualified activities under the doctrine of primary assumption of the risk (*Custodi* v *Town of Amherst*, 20 NY3d 83, 88 [2012]). This is because in high risk voluntary activities both parties understand that willingly assuming the risk of injury is the price of participating in that activity. Therefore, that defendant is only required to exercise such care as to make the conditions as safe as they appear to be *(Turcotte* v *Fell,* 68 NY2d 432,438 [1986]). For primary assumption of the risk to apply, a consenting participant in a qualified activity must be "aware of the risks; ha[ve] an appreciation of the nature of the risks; and voluntarily assume[] the risks" (*Bouck v Skaneateles Aerodrome, LLC,* 129 AD3d 1565, 1566 [4th Dept 2015]; quoting *Bukowski v Clarkson Univ.*, 19 NY3d 353, 356 [2012]).

A. Plaintiff Was Aware of Any Potentially Dangerous Condition That Existed in Pod Two

If a defect in, or feature of, the court upon which the sport is being played is an inherent or an open and obvious risk, then the owner of the premises is protected by the doctrine of primary assumption of risk (*Maddox v City of NY*, 66 NY2d 270, 277 [1985]; *Cevetillo v. Town of Mount Pleasant*, 262 A.D.2d 517, 518 [2d Dept 1999]; *Braithwaite v. State*, 907 N.Y.S.2d 435 (Ct Cl 2009).

Over the course of several months, Plaintiff had played on the court in Pod two multiple days a week (Plaintiff's EBT at 38-39; Plaintiff's Inmate Processing Form). When inmates would walk on the floor or land after jumping, they could feel that the flooring had some give (H's EBT at 17, 19). On the rare occasion that the inmates played basketball when it had rained or snowed, they would inspect the court prior to playing basketball (H's EBT at 45-46). Over such a long timeframe it is clear that Plaintiff was familiar with the general condition of the flooring in the recreational area along with any potential slick condition created by rain or snow. According to Plaintiff, whenever the floor was slippery he could both see and feel such a condition (Plaintiff's EBT at 75). Further, the possibility of colliding with another player is also an inherent risk when playing basketball. Plaintiff's frequent use of the Pod two basketball court and his previous exposure to its flooring and occasionally slick condition, as well as the inherent risk of collision in basketball, demonstrate that Plaintiff was fully aware of those potential dangerous conditions.

B. Plaintiff Had an Appreciation of the Nature of the Risks Involved in Playing Basketball in Pod Two

Plaintiffs are not required to foresee the exact manner in which their injury occurred; rather, plaintiffs must only be aware of the potential for injury caused by the mechanism by which it

occurred (*Bouck v Skaneateles Aerodrome, LLC*, 129 AD3d 1565, 1566 [4th Dept 2015]; citing *Maddox v City of NY*, 66 NY2d 270, 278 [1985]).

Plaintiff had witnessed others fall while playing basketball and had fallen himself (Plaintiff's EBT at 38-39). The possibility of falling while playing basketball was a reasonably foreseeable consequence and an inherent risk explicitly known by Plaintiff (Plaintiff's EBT at 39). Due to Plaintiff's prior experience playing basketball, Plaintiff had previously told another inmate that he would not dunk because, in his opinion, the floor was not ideal for playing basketball and could cause injury (H's EBT at 39-40). Plaintiff reiterated that statement just prior to his accident (H's EBT at 22-23). The various mechanisms which could cause a fall, such as a floor that was slick, pliant, or imperfect, were all known, obvious conditions encountered by Plaintiff on a weekly basis.

C. Plaintiff Voluntarily Assumed Any and All Risks Which May Have Existed

The mere fact that a person participates in a recreational activity establishes that the person consented to those injury-causing events that are known, apparent, or reasonably foreseeable consequences of participation (*Turcotte v Fell* 68 NY2d 432, 439). If the risks involved in the activity are open and obvious or if the risks are fully comprehended, then the plaintiff has consented to the risks and the defendant has performed its duty (*id.*). Along with considering the openness and obviousness of the risk, courts also consider whether the risk is inherent in the activity; the plaintiff's background, skill, and experience; the plaintiff's conduct under the circumstances; and the nature of defendant's conduct (*Deak* v *Bach Farms, LLC*, 34 AD3d 1212, 1214 [4th Dept 2006]).

A determination of whether a recreational court is wet is not a material issue when, even assuming that the court was in fact wet, it does not present an unassumed or unreasonably increased

risk to a plaintiff (*Vecchione v Middle Country Cent. Sch. Dist.*, 300 AD2d 471, 472 [2d Dept 2002]). In the case of an outdoor basketball court, the risk of playing on an irregular surface is inherent (*Sykes v County of Erie*, 94 NY2d 912, 913 [2000]). A recreation area in a holding center which is exposed to the elements by way of a security mesh, such as in Pod two, is considered outdoors (*Scoma v United States*, 2004 US Dist LEXIS 84 [EDNY Jan. 7, 2004, No. 02 CV 2970 (JG)] at *2-3; *see* Y's EBT at 10). Further, encountering defects in the flooring itself, such as an air pocket, is a risk inherent in playing basketball (*Sykes v County of Erie*, 94 NY2d 912, 913 [2000]; *see* F's EBT at 15).

Although Plaintiff contends that the recreational area was "always slippery," he voluntarily continued to play basketball in Pod two (Plaintiff's EBT at 72; *see also* (*Levinson v Inc. Vil. of Bayville*, 250 AD2d 819, 820 [2d Dept 1998]). Plaintiff knew that landing on the floor after dunking the ball could cause injury, yet he chose to put himself in an analogous situation by jumping for a rebound (NCSO Criminal Investigation Report; S EBT at 10; G EBT at 31; H's EBT at 39-40). Plaintiff's continued voluntary participation in basketball over a roughly six-month period clearly demonstrates that he consented to and assumed those obvious or inherent risks which arise out of the nature of playing basketball. In sum, Plaintiff's injury was nothing more than a luckless accident arising from his voluntary participation in a recreational activity.

II. THERE IS NO EVIDENCE THAT DEFENDANTS FAILED TO FULFILL THEIR DUTY OF REASONABLE CARE

Even if the doctrine of primary assumption of the risk does not apply, Defendants are not liable for Plaintiff's injury. Defendants are only required to maintain a prison "in a reasonably safe condition under the circumstances" and have no obligation "to insure against every injury which may occur" (*Sanchez v State*, 99 NY2d 247, 253 [2002]; *quote* from *Jones v Cty. of Rensselaer*, 51 AD3d 1073, 1074 [3d Dept 2008]). For example, trivial defects which may only cause a person

to stumble or trip are not actionable (*Lamarre v Rensselaer County Plaza Assoc.*, 303 AD2d 914, 914 [3d Dept 2003]; citing *Trincere v County of Suffolk*, 90 NY2d 976, 977 [1997]). For a duty to exist, a dangerous condition must be reasonably foreseeable; this requires that defendants had actual or constructive notice of the condition (*Sanchez v State*, 99 NY2d 247, 255 [2002]). In the case of recreational activities, defendants are only required to exercise ordinary reasonable care to protect participants from unassumed, concealed, or unreasonably increased risks (*Fintzi v New Jersey YMHA-YWHA Camps*, 97 NY2d 669, 670 [2001]).

To demonstrate a defendant was negligent in fulfilling their duty to a plaintiff, the plaintiff must first present evidence that a dangerous condition existed (*Medina v Sears, Roebuck & Co.*, 41 AD3d 798, 799 [2d Dept 2007]). Then, the plaintiff must show that the defendants either created the dangerous condition or had actual or constructive knowledge of such dangerous condition and further failed to correct it in a reasonable time (*Jones v Cty. of Rensselaer*, 51 AD3d 1073, 1074 [3d Dept 2008]). Finally, the dangerous condition must have been a substantial factor in causing the plaintiff's injury.

A. There is No Evidence That a Dangerous Condition Existed

Plaintiff's allegations as to the existence of a dangerous condition must be more than pure speculation and conjecture (*Jones v Cty of Rensselaer*, 51 AD3d 1073, 1074 [3d Dept 2008]). The simple fact that a floor can become slippery when wet is not sufficient to establish a dangerous condition (*Madrid v New York*, 42 NY2d 1039 [1977]; *Todt v. Schroon River Campsite Inc.*, 281 A.D.2d 782, 783 [3d Dept 2001]; citing *Miller v Gimbel Bros., Inc.*, 262 NY 107, 108 [1933]).

By admission, Plaintiff has no memory of the days prior to and the day of the accident so could not have had personal knowledge of any dangerous condition that caused his fall (Plaintiff's EBT at 30-31). Further, investigators were told by seven inmates that were in the area at the time

of the accident that the floor was not slippery and was free of debris (S's EBT at 45; NCSO Criminal Investigation Report). Personnel at the scene specifically told investigators that the floor was not damp or wet (Supplemental Incident Report). Captain Y, Sergeant G, and Sergeant X did not mention to investigators that the floor was wet or damp through the course of investigating the accident (S's EBT at 45). Sergeant G told Investigator S and reiterated at his deposition that the floor was dry (S's EBT at 35; G's EBT at 24). Office O, who was at the accident scene, said that the floor was dry around the Plaintiff and that there was no precipitation underneath the mesh openings (O's EBT at 18-19). Further, weather reports revealed that there was no precipitation the day of the accident, calm winds, and temperatures above freezing (S's EBT at 31; NCSO Criminal Investigation Report).

Plaintiff also fails to present evidence that the flooring used in the recreation area did not comply with any form of regulation nor does Plaintiff present any expert witness to assert that the flooring was defective in any way. Moreover, any potential defect in the floor, such as a flexible coating or air bubble, is so trivial as to not be actionable as a matter of law (F's EBT at 15; H's EBT at 35-36). Beyond the trivial nature of such defects, Plaintiff fails to present evidence that Defendants had notice of such defects prior to Plaintiff's fall (F's EBT at 15). Based on the aforementioned facts, there is insufficient evidence to demonstrate that a dangerous condition existed at the time of Plaintiff's accident.

B. There is No Evidence That Defendants Created or Had Actual or Constructive Notice of Any Dangerous Condition

Plaintiff has not presented sufficient evidence to demonstrate that Defendants caused, or had actual or constructive notice of, any alleged dangerous condition. New York State required that fresh air enter the recreation area (Y's EBT at 10). To comply with this requirement, the recreational area had openings, covered with security mesh, that could not be covered (K's EBT

at 20). Thus, any water in the recreation area was not caused by defendants and was merely a result of uncontrollable weather conditions combined with the mandated nature of the recreation area.

There is no evidence that Defendants had actual notice of any dangerous condition in the recreational area. Inmates would inspect the floor prior to playing basketball and were required to notify the on-duty corrections officer of any unsafe condition (H's EBT at 44-46; K's EBT at 36-37). The officer would then provide the inmates, who were responsible for cleaning the recreation area, with the necessary cleaning supplies (H's EBT at 44-46; K's EBT at 36-37). Prior to Plaintiff's injury, the corrections officer on duty at the recreation area received no complaints from inmates concerning the condition of the floor (K's EBT at 37). While working in Pod two, Officer W would inspect the recreation area every morning (W's EBT at 12). Despite inspecting the area every morning, Officer W never saw water on the court itself, let alone the free-throw line where Plaintiff had fallen (W's EBT at 13).

To assert that Defendants had constructive notice, Plaintiff must demonstrate that a dangerous condition was apparent and existed for an appreciable amount of time as to give Defendant both notice and opportunity to remedy such dangerous condition (*Gordon v Am. Museum of Natural History*, 67 NY2d 836, 837 [1986]). General awareness that a dangerous condition may be present is not legally sufficient for constructive notice of the condition which caused the accident (*Gordon v Am. Museum of Natural History*, 67 NY2d 836, 838 [1986]). Therefore, general awareness that water had been on the floor beneath the mesh in the past, which never reached the basketball court, is not sufficient to provide actual or constructive notice to the Defendants (*see* W's EBT at 12-13; M EBT at 19-20; H's EBT at 43; G EBT at10). Further, Officer K has no knowledge of any prior complaints from inmates concerning the condition of the floor in the recreation area (K's EBT at 37).

Plaintiff presents no evidence that any particular unsafe condition was apparent and noticeable nor does Plaintiff present evidence that Defendants had sufficient time to both notice and correct an unsafe condition.

C. Plaintiff Presents No Evidence That Defendants' Failure to Correct Any Alleged Defect Was a Substantial Factor in Causing Plaintiff's Injury

With allegations of improper flooring, Plaintiff must establish that the difference in floor surfaces was the proximate cause of Plaintiff's injury and that Defendants had a duty to use alternative flooring (*Rosado v State*, 139 AD2d 851, 852 [3d Dept 1988]). Here, there is no evidence which suggests that, had the flooring in the recreational area been different, the accident would not have occurred. Plaintiff presents no eyewitness who saw a defective condition cause Plaintiff's fall (H's EBT at 41). Therefore, any factor which Plaintiff suggests as the cause of the accident is nothing more than mere speculation and conjecture.

Plaintiff has presented no evidence to support his allegation that slick conditions caused Plaintiff's fall. In fact, the statements of multiple witnesses support the conclusion that slick conditions could not have possibly caused Plaintiff's fall. Both corrections officers and inmates reported that the floor was dry where Plaintiff had fallen (G's EBT at 24; O's EBT at 18-19; NCSO Criminal Investigation Report). Weather reports from the day of the accident reveal that there was no precipitation and calm winds (S's EBT at 31; NCSO Criminal Investigation Report). Further, witness statements reveal that rain or snow had never reached the area where inmates played basketball (M's EBT at 20; H's EBT at 43). At least one eyewitness reported to police investigators that Plaintiff fell as a result of his legs tangling with another player while jumping for a rebound (NCSO Criminal Investigation Report; S EBT at 10; G EBT at 31). Thus, Plaintiff has not presented sufficient evidence to even suggest that a defective condition was a substantial cause of Plaintiff's fall.

CONCLUSION

For the foregoing reasons above, the County of XXXX and the XXXX County Sheriff's Department respectfully submit that the Court grant summary judgment in favor of Defendants on all of Plaintiff's causes of action against them and issue an Order dismissing Plaintiff's Complaint, and grant any further relief as this Court deems just and proper under these circumstances.

Applicant Details

First Name	**Teddy**
Last Name	**Ryan**
Citizenship Status	**U. S. Citizen**
Email Address	**trf36@georgetown.edu**
Address	**Address** Street **33 Autumn Hills Drive** City **Weaverville** State/Territory **North Carolina** Zip **28787** Country **United States**
Contact Phone Number	**6082097417**

Applicant Education

BA/BS From	**University of Wisconsin**
Date of BA/BS	**May 2018**
JD/LLB From	**Georgetown University Law Center** **https://www.nalplawschools.org/employer_profile?FormID=961**
Date of JD/LLB	**May 23, 2021**
Class Rank	**School does not rank**
Does the law school have a Law Review/Journal?	**Yes**
Law Review/Journal	**No**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**Yes**

Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Bledsoe, Louis
louis.a.bledsoe@nccourts.org
(704) 686-0144

Teitelbaum, Joshua
jct48@law.georgetown.edu
202 661-6589

Conrad, Adam
charlotte.info@ncbusinesscourt.net
(704) 686-0144

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Teddy Ryan
8504 16th St #706
Silver Spring, MD 20910

August 24, 2020

The Honorable Elizabeth W. Hanes
Magistrate Judge
Spottswood W. Robinson III and Robert R. Merhige, Jr., Federal Courthouse
701 East Broad Street
Richmond, VA 23219

Dear Judge Hanes:

I am entering my third year at Georgetown University Law Center where I am focusing on constitutional and financial law. I am writing to apply for a two-year clerkship in your chambers beginning in August 2021. Over the past two summers I have enjoyed my Charlotte-based judicial internships with the Superior Court and the Business Court. I have enjoyed living in the Washington, DC area during my time in law school and would welcome the opportunity to serve as a judicial clerk.

I am confident that I can make a substantial contribution to the Court's work. During my judicial internship with Judges Bledsoe and Conrad of the North Carolina Business Court I wrote opinions as part of a small team. While interning at the SEC's Division of Enforcement I conducted legal research and assisted with outgoing briefs. In my time with Judge Trosch of the Mecklenburg County Superior Court I wrote many orders and memoranda. These clarifying experiences have not only sharpened my writing and research skills, but more importantly have enhanced my ability to isolate crucial legal issues. Each experience has cultivated my interest in a judicial clerkship, the whole of which is the impetus for my application.

My resume, unofficial transcript, and references are attached. Please let me know if you seek any additional information. I can be reached by phone at (608) 209-7417, or by email at trf36@georgetown.edu. Thank you for your consideration.

Respectfully,

Teddy Ryan

Teddy Ryan Farris
8504 16th St #706, Silver Spring, MD 20910
608-209-7417 – trf36@georgetown.edu

EDUCATION

Georgetown University Law Center Washington, D.C.
Juris Doctor Anticipated May 2021
GPA: 3.31
Activities: Corporate & Financial Law Organization (CFLO)
Coursework: Corporations; Securities Regulation; Adv. Studies in Federal Securities Regulation

The University of Iowa College of Law Iowa City, IA
GPA: 3.77 (Class rank: 12 of 142) 2018-2019

University of Wisconsin—Madison Madison, WI
B.A. in Classical Guitar Performance May 2018

EXPERIENCE

North Carolina Business Court Charlotte, NC
Judicial Intern May 2020 – August 2020

- Analyze complex and significant legal issues.
- Conduct legal research on issues of corporate and commercial law.
- Draft memoranda, orders, and opinions.
- Assist in case management.

Securities and Exchange Commission Washington, D.C.
Student Honor Legal Intern: Division of Enforcement January 2020 – April 2020

- Assembled exhibits, prepared questions, and attended witness testimony.
- Researched legal standards or precedent to assist in investigation and litigation.
- Reviewed document productions and identified documents relevant to allegations.

26th Judicial District of North Carolina Charlotte, NC
Judicial Intern May 2019 – August 2019

- Conducted legal research on issues of civil and criminal law.
- Drafted memoranda and orders.

Community Music Lessons Madison, WI
Classical Guitar Instructor August 2016 – May 2018

PROFESSIONAL AFFILIATIONS & INTERESTS

Researching, designing, testing, and ultimately creating my own tabletop games.

Teddy Ryan
University of Iowa College of Law
Cumulative GPA: 3.76

Fall 2018

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Contracts (LAW 8017)	Steven Burton	3.8	4.0	
Introduction to Law and Legal Reasoning	Stella Burch Elias	Pass	1.0	
Legal Analysis Writing and Research I (LAW 8032)	Caroline Sheerin	3.8	4.0	
Property (LAW 8037)	Sheldon Kurtz	3.7	4.0	
Torts (LAW 8046)	Paul Gowder	3.5	4.0	

Spring 2019

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Civil Procedure	Stella Burch Elias	4.0	4.0	
Constitutional Law I (LAW 8010)	Todd Pettys	3.6	3.0	
Criminal Law (LAW 8022)	James Tomkovicz	3.8	3.0	
Criminal Procedure: Investigation (LAW 8350)	James Tomkovicz	3.9	3.0	
Legal Analysis Writing and Research II (LAW 8033)	Christopher Liebig	3.9	2.0	

Teddy Ryan
Georgetown University Law Center
Cumulative GPA: 3.31

Fall 2019

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Analytical Methods (LAWJ 1107)	Joshua Teitelbaum	B	3.00	
Corporations (LAWJ 121)	Russell Stevenson	A-	4.00	
Evidence (LAWJ 165)	Michael Pardo	B+	4.00	
Professional Responsibility (LAWJ 361)	Dolores Dorsainvil	B	2.00	

Spring 2020

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Advanced Studies in Federal Securities Regulation: Policy and Practice (LAWJ 381)	John Olson	Pass	3.00	"
Deals: The Economics of Structuring Transactions (LAWJ 459)	Joshua Teitelbaum	Pass	4.00	"
Externship I Seminar (LAWJ 1491)	John Cooper	Pass	4.00	Mandatory pass fail for all classes.
Securities Regulation (LAWJ 396)	Russell Stevenson	Pass	3.00	"

August 31, 2020

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige, Jr.
U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

I am writing in support of Teddy Ryan's application to serve as your law clerk after his graduation from Georgetown Law Center next year.

Teddy served as a summer intern in the North Carolina Business Court's Charlotte office from mid-May through early August, 2020. Teddy's role was identical to that of one of my regular law clerks, including working remotely forty hours each week during his internship. His assignments primarily consisted of writing first drafts of opinions and orders and assisting me in preparing for various hearings. Teddy displayed strong analytical, research, and writing skills and showed that he is a hard worker. He takes direction well and does not require extensive supervision or guidance to complete assigned tasks. He also proved to be a cooperative team player through his interactions with my law clerks and judicial assistant, and we all enjoyed working with Teddy on a day-to-day basis. I found Teddy to be very thoughtful about the issues that were before me for decision, and I have high confidence that he will be a fine lawyer after graduation.

In sum, I encourage you to give Teddy the strongest consideration. I welcome the opportunity to discuss Teddy with you should you deem that appropriate.

Very truly yours,

Louis A. Bledsoe, III
Chief Business Court Judge

Louis Bledsoe - louis.a.bledsoe@nccourts.org - (704) 686-0144

Georgetown Law
600 New Jersey Avenue, NW
Washington, DC 20001

August 28, 2020

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige, Jr.
U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

This is a letter of recommendation for Teddy Farris in support of his application for a federal judicial clerkship. I have come to know Teddy because he was an outstanding student in two courses that I taught at Georgetown University Law Center in the 2019-2020 academic year.

I am a Professor of Law and Agnes N. Williams Research Professor at Georgetown University Law Center. I am also an Affiliate Faculty member in the Department of Economics at Georgetown University. Before coming to Georgetown, I clerked for Judge Richard M. Berman of the U.S. District Court for the Southern District of New York, practiced law at Cahill Gordon & Reindel in New York, and was a Visiting Assistant Professor at Cornell Law School. I hold a J.D. from Harvard Law School and a Ph.D. in Economics from Cornell University.

I first met Teddy in the fall semester of 2019 when he was a student in my course, Analytical Methods. The objective of the course is to enhance students' ability to give sound legal advice and make effective legal arguments by introducing them to selected concepts and methods from economics and statistics that are relevant to numerous areas of law and legal practice. Grades are based on class participation (10%), a midterm exam (25%), and a final exam (65%). The students are also responsible for working on daily problems that we discuss together in class. This gives the students an opportunity to actively work with the course material throughout the semester, and it gives me the opportunity to see in real time how the students are doing with the material.

Teddy did very well in the course. He earned the sixth highest score on the midterm exam (out of 30 students) and consistently made valuable contributions to class discussions. He underperformed on the final exam, however, which accounts for why his final grade was a B. Nonetheless, based on his performance in class and on both exams, it is evident to me that Teddy came away with a very good understanding of the material that we covered in the course. What's more, his comments and questions in class and in my office hours reflected a great academic curiosity for the subject matter, a trait that in my opinion characterizes the best law students.

I next encountered Teddy in the spring semester of 2020 when he was a student in my course, Deals: The Economics of Structuring Transactions. The course examines how deal lawyers create value through transaction engineering, with a focus on M&A and capital markets transactions (though we study a variety of other types of transactions as well). The course is organized in two parts. The first part studies various barriers to transacting, including collective action problems, information problems, risk and uncertainty, and contracting over time, and a range of solutions grounded in game theory, contract theory, and decision theory. The second part of the course studies a series of real transactions. Students are divided into work groups of two or three students, each of which is responsible for presenting a transaction to the class and for writing a group paper analyzing the transaction. Grades are based on a midterm exam (25%), the group presentation and paper (25%), and a final exam (50%).

Teddy performed well on the midterm and final exams, scoring above the median on both. Where he really distinguished himself, however, was in the group work. Teddy's group analyzed the financing and development of AT&T Stadium (formerly Cowboys Stadium) in Arlington, Texas, a joint venture between the City of Arlington and the Dallas Cowboys. Their analysis focused on the potential free rider, holdout, and moral hazard problems lurking in the deal and on how the parties dealt with these issues. Their presentation and paper were outstanding, evincing a deep understanding of the issues and a careful analysis of the deal's structure and terms. Because Georgetown adopted a mandatory P/F grading system for J.D. students in spring 2020 due to COVID-19, I was unable to properly reward Teddy for his superior performance, which I regret.

In my personal interactions with Teddy, including conversations after class and during my office hours, I found him to be a personable and mature young man. He appeared to be well grounded and well adjusted to the rigors of life as a J.D. student at Georgetown. Based on these interactions, I imagine it would be enjoyable and rewarding to have Teddy in chambers.

Joshua Teitelbaum - jct48@law.georgetown.edu - 202 661-6589

Finally, I note that Teddy has performed at a high level in his other law school courses (both here at Georgetown and also at Iowa), and that he has gained valuable experience working as a judicial intern in North Carolina and a legal intern at the Securities and Exchange Commission.

In summary, based on his performance in my courses, his overall academic performance in law school, his personal qualities, and his work experience, I believe that Teddy has the potential to excel as federal judicial clerk, and I recommend him highly.

Yours truly,

Joshua C. Teitelbaum

Professor of Law and Agnes N. Williams Research Professor

Joshua Teitelbaum - jct48@law.georgetown.edu - 202 661-6589

Adam M. Conrad
Special Superior Court Judge for Complex Business Cases

832 East Fourth Street, Suite 9600; Charlotte, NC 28202
O 704-686-0144
adam.m.conrad@ncbusinesscourt.net

August 25, 2020

To whom it may concern,

I write regarding the application of Teddy Farris. Teddy recently served as an intern here at the North Carolina Business Court. I found Teddy to be focused, hard-working, and eager to learn.

Although the coronavirus pandemic meant that Teddy and I did not work together in person, Teddy worked remotely on a range of matters that involved research, complex writing, and attendance of virtual hearings during his time at the Court. His work for me was always timely. Perhaps more importantly, Teddy asked perceptive questions and welcomed feedback, which he took to heart and incorporated into subsequent drafts and future assignments. Throughout his internship, Teddy was professional and displayed a seriousness about the job, especially considering the unique working environment in which we found ourselves this year.

In short, my law clerks and I enjoyed working with Teddy and found him to be a team player. If I can offer any further help, please do not hesitate to call or e-mail.

Sincerely,

Adam M. Conrad
Special Superior Court Judge
for Complex Business Cases

The following writing sample is an excerpt from a class paper I wrote for *Advanced Studies in Federal Securities Law*. The paper focused on the SEC's proposed revisions to the definition of the accredited investor. This excerpt includes only the first section which gives a detailed history of the accredited investor definition, Regulation D, and *Ralston Purina*. Although I was unable to receive a letter grade due to Georgetown's COVID-based mandatory pass-fail policy, my professor reached out to tell me he thought it excellent work.

This writing sample is wholly a work of my own without any editing by another.

Teddy Ryan Farris

Introduction

This paper will address the SEC's proposed revisions to the definition of accredited investor. First, it will proceed by giving the history leading to the enactment and current state of Regulation D as well as the accredited investor definition. Second, it will discuss criticisms of the current accredited investor definition, and the reasonable verification requirement of Rule 506(c). Third, it will lay out the SEC's proposed amendments to the accredited investor definition. Fourth, it will speculate on how this change will affect private placements with regard to individuals. Finally, it will offer suggestions on how to improve the updated Regulation D framework with respect to the reasonable verification standard of Rule 506(c).

Regulation D: A History

Ralston Purina and the Sophisticated Investor

Section 5 of the Securities Act of 1933 requires issuers of securities to register publicly offered securities with the SEC and in the process make a large number of disclosures to the public. There are several exemptions to the registration requirements of Section 5. One such exemption is Section 4(a)(2), the private offering exemption, which can be used where the

transaction is one "not involving any public offering."[1] However, Congress did not define precisely what it meant to conduct a "public offering."

Due to the lack of a congressional definition, issuers required another lodestar to follow in trying to comport with the rules. One came in the form of a letter from the general counsel of the SEC. Published in a 1935 release, it listed four primary factors used to identify whether the private placement exemption was satisfied.[2] First, the number of offerees and their relationship to each other and the issuer. It stressed offerees, not purchasers. Second, the number of units offered. Third, the size of the offering. Larger offerings were more likely to be deemed public. Finally, the manner of the offering. Direct negotiation suggested a private offering, whereas widespread distribution of general offers suggested public offerings.

That changed with the advent of *Ralston Purina*.[3] No longer was the test for private placement dependent upon these factors. *Ralston Purina* shifted and narrowed the question to whether the: (1) offering was made to persons who were able to fend for themselves; and (2) those persons had adequate access to information of the kind which a registration statement would disclose. However, these factors do still play an underlying part in the analysis. Though there is no hard number, courts still see a large quantity of offerees as a sign of a public offering. Additionally, courts focus on the offerees' relationship to each other and the issuer.

All investors must be "sophisticated" to take advantage of the private placement exemption. As defined in *Ralston Purina* this essentially means that such investors must be able to "fend for themselves." For a long time, investors and courts struggled with how to go about

[1] 15 U.S.C. § 77d (1933).

[2] Securities Act Release No. 285, 1 Fed. Sec. L. Rep. (CCH) ¶ 2741-2744 (Jan. 24, 1935).

[3] *Securities and Exchange Commission v. Ralston Purina Co.*, 346 U.S. 119 (1953).

navigating a predictable and necessary framework for establishing an investor's sophistication.[4] Decades of litigation attempted to define what it meant for an investor to be sophisticated, and to make the standard predictable. This litigious struggle pushed the SEC to adopt a series of rules that worked to clarify the concept of investor sophistication. Over nearly a decade leading up to 1982, the SEC released rules in an effort to clarify the standard.

Pre-Regulation D Rules

The first rule, Rule 146, was adopted in 1974.[5] It adhered to the pre-Ralston reasoning and set a clear limit at 35 total investors. Issuers could not rely on general advertising or general solicitation. Sales could only be made to those who had the requisite financial knowledge and experience unless the investor had a representative capable of providing the required skillset. Offers and sales could only be made to an investor the issuer reasonably believed had "such knowledge and experience that he is capable of evaluating the merits and risks of the proposed investment or that the offeree can bear the economic risk of the investment."[6] The stated goals of Rule 146 were to prevent the use of Section 4(a)(2) with regard to investors unable to fend for themselves and clarify the standards as well as the application of the exemption.[7]

The year following the enactment of Rule 146 the SEC saw fit to adopt its second rule on the matter: Rule 240. Rule 240 was a small-business focused exemption that allowed companies

[4] *See* Securities and Exchange Comm'n v. Sunbeam Gold Mines Co., 95 F.2d 699, 701 (1938).

[5] 17 C.F.R. § 230.146 (1975), adopted in SEC Securities Act Release No. 5487 (April 23,1974), 1 CCH Red. Sec. L. Rep. ¶ 2710.

[6] H.R. Rep. No. 85, at 15-16 (1933).

[7] *See* Transactions By an Issuer Deemed Not To Involve Any Public Offering, Release No. 33-5487 (Apr. 23, 1974).

with fewer than 100 beneficial owners to raise up to $100,000 per year.[8] However, these companies could not rely upon general solicitation or advertising.

Soon after the SEC adopted its third rule on the matter, Rule 242, which provided an exemption for limited offerings of up to $2 million under Section 3(b)(1) of the Securities Act.[9] More importantly it explicitly introduced the idea of the accredited investor. Rule 242 allowed for up to 35 non-accredited investors. If all investors were accredited, then there were no informational requirements on the part of the issuer. Rule 242 was unique in that it did not require issuers to inquire as to investor sophistication. Instead, issuers could rely on the objective criteria of the accredited investor. Under Rule 242, an "accredited person" was defined as an investor purchasing at least $100,000 of the offered securities, a director or executive officer of the issuer, or one of a group of specified entities such as banks, insurance companies, employee benefit plans, investment companies, and licensed Small Business Investment Companies. Consistent with Rule 146, Rule 242 did not allow issuers to rely on general solicitation and advertising.

The Small Business Investment Incentive Act of 1980 (the "Incentive Act") exempted from Securities Act registration non-public offers and sales of up to $5 million made only to accredited investors.[10] It also added the accredited investor definition to Section 2(a)(15) of the Securities Act. Under Section 2(a)(15)(i), an accredited investor was defined as one of the listed entities which were the same as those found in Rule 242. Section 2(a)(15)(ii) permitted future adoption of categories that could be based on a number of factors, "such [] as financial

[8] *See* Exemption For Closely Held Issuers, Release No. 33-5560 (Jan. 24, 1975).

[9] *See* Exemption of Limited Offers and Sales by Qualified Issuers, Release No. 33-6180 (Jan. 17, 1980).

[10] Pub. L. No. 96-477, 94 Stat. 2275 (1980).

sophistication, net worth, knowledge, and experience in financial matters, or amounts of assets under management."[11]

The Adoption of Regulation D

In 1982 the SEC worked to clarify and disentangle the law by repealing all three Rules and enacting Regulation D. Regulation D was comprised of six rules, creating two exemptions, and one non-exclusive safe harbor shielding issuers from the registration requirements of the Securities Act. Rules 504 and 505 replaced Rules 240 and 242 to provide registration exemptions under Section 3(b)(1) of the Securities Act. Section 3(b)(1) enables the SEC to exempt offerings of securities of up to $5 million. Rule 506 replaced Rule 146 to provide a non-exclusive safe harbor under Section 4(a)(2) of the Securities Act. Section 4(a)(2) is the private offering exemption which exempts transactions not involving any public offering.

The concept of the accredited investor lies at the heart of Regulation D. Rule 501 defines accredited investor by enumerating the types of natural persons and entities that qualify. It included certain institutional investors, private business development companies, charitable organizations, natural persons with the requisite net worth or income, and entities with all equity owners being accredited. Additionally, the initial formulation of the accredited investor included purchasers of at least $150,000 of the offered securities, up from the $100,000 threshold of Rule 242, but this was removed in 1988. The common thread among the enumerated types is the belief that these investors had the requisite financial sophistication or ability to sustain the risk of losing the investment. This characteristic meant that these investors could fend for themselves and Securities Act protections were superfluous.

[11] 15 USC § 77b(a)(15)(ii).

Located in 501(a) of Regulation D, the accredited investor definition as it relates to a natural person is defined to mean, "any person who comes within any of the following categories**,** or who the issuer reasonably believes comes within any of the following categories, at the time of the sale of the securities to that person." There are three primary ways a natural individual can qualify as an accredited investor under 501(a).

First, if the person is a director, executive officer, or general partner, of the issuer offering or selling the securities, or of the general partner of the issuer. Second, an individual whose net worth, or net worth when combined with his spouse, surpasses $1,000,000. Importantly, a change enacted in Dodd-Frank now excludes an investor's primary residence from the calculation of assets.[12] Finally, an individual who has an income of over $200,000 in each of the last two years, or an income of over $300,000 in such a time when combined with his spouse and has a reasonable expectation of reaching the same income level in the current year. Satisfying the income or net worth thresholds is the way that a great many natural persons qualify as accredited investors. Both thresholds were set when Regulation D was enacted in 1982 and have not been updated since.

Rule 506 of Regulation D offers two critical exemptions for companies that want to bypass the expensive registration process of Section 5 – Rule 506(b) and Rule 506(c). Central to both exemptions is the idea of the accredited investor as defined in 501(a) of Regulation D.

Rule 506(b) reflects the rule as it was in 1982. It allows for a safe harbor which guarantees compliance under Section 4(a)(2). To comply with the rule the company must satisfy four requirements. First, the company may not use general solicitation or advertising. Second, the company must sell to no more than 35 non-accredited investors. It should be noted that these

[12] *See* SEC, "Net Worth Standard for Accredited Investors," Release no. 33-9287 (February 27, 2012).

non-accredited investors must still be sophisticated investors. Third, the information with which a company decides to provide investors must be free of false or misleading statements. The information provided to non-accredited investors typically resembles that found in Regulation A or registered offerings and often involve financial statements. Finally, the company must be available to answer questions by potential investors.

Where offers are made to non-accredited investors, Rule 502(b) requires issuers to provide specified financial and non-financial information to such offerees. Where the specified information is provided to non-accredited investors, the issuer should consider providing the information to accredited investors as well. But where the offering is made solely to accredited investors, issuers do not have to disclose the financial and non-financial information specified in Rule 502(b). Though the vast majority of private placement offerings contain only accredited investors, issuers typically give the investors an offering circular which provides information akin to that of a prospectus. This relaxation of Rule 502(b)'s informational requirements is likely another reason why issuers overwhelmingly conduct private offerings involving only accredited investors as these issuers are seeking to avoid the costs of registration.[13]

Rule 506(c), another safe harbor, allows for guaranteed compliance under Section 4(a)(2), where the company satisfies two requirements. First, the investors in the offering must all be accredited investors. Second, the company takes reasonable steps to verify that the investors are accredited investors, which typically involves the company reviewing financial documentation for each investor. 506(c) allows for the use of general solicitation or advertising. Crucially, the exemption is unavailable to a company that does not take reasonable steps to verify an investor's accredited status even if all of the investors are in fact accredited.

[13] SEC, "Report on the Review of the Definition of 'Accredited Investor.'"

What constitutes a reasonable step for investor verification under 506(c) has changed somewhat over time. Initially, the SEC's proposal focused on a principles-based method of verification. A nonexclusive list of three factors was included in the proposal. First, the nature of the purchaser and the type of accredited investor the purchaser claims to be. Second, the amount and type of information that the issuer has about the purchaser. Third, the nature and terms of the offering are relevant. However, this list garnered criticism as it was seen as nebulous and unpredictable. The SEC ultimately moved forward with its principles-based method of verification but added non-exclusive safe harbors which give issuers more certainty. Where the inveestor is seeking accredited status on the basis of income, review of tax returns is sufficient. Where the investor is seeking accredited status on the basis of wealth, review of documentation related to net worth, such as bank statements, is sufficient. This stringent verification requirement tempered the initial positive reaction to 506(c)'s enactment. Criticism of Rule 506(c) is but one of many longstanding criticisms of Regulation D and the accredited investor definition.

Applicant Details

First Name	**Charles**
Middle Initial	**H**
Last Name	**Salamone**
Citizenship Status	**U. S. Citizen**
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Contact Phone Number	**2512291402**

Applicant Education

BA/BS From	**Troy State University-main campus**
Date of BA/BS	**May 2018**
JD/LLB From	**The University of Mississippi School of Law** **http://www.nalplawschoolsonline.org/ndlsdir_search_results.asp?lscd=62501&yr=2011**
Date of JD/LLB	**May 20, 2022**
Class Rank	**50%**
Does the law school have a Law Review/Journal?	**Yes**
Law Review/ Journal	**No**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**Yes**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Specialized Work Experience	**Habeas, Immigration, Prison Litigation**

Professional Organization

Organizations	**Federalist Society since 2019** **PAD since 2019**

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References

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3. Mr. Clay Joyner
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5. Major David J. Derochick
Brigade Judge Advocate, 4/25 IBCT (ABN) (Former Title)
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Phone: 620-218-4332

This applicant has certified that all data entered in this profile and any application documents are true and correct.

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CharlesSalamone1@gmail.com

April 6, 2021

The Honorable Elizabeth W. Hanes
U.S. District Court for the Eastern District of Virginia
701 East Broad Street
Richmond, VA 23219

Dear Judge Hanes,

I would like to thank you for taking the time to consider my application to become the 2023-2024 Term Law Clerk for your chambers in the Eastern District of Virginia. I am honored to apply and I would cherish the opportunity to work for you in Richmond next year.

I have spent my entire career working for the Federal Government in one capacity or another. By the end of Summer 2022, I will have interned for two federal judges, the U.S. Securities and Exchange Commission, the United States Attorney's Office for the Northern District of Mississippi, and I will be a non-commissioned officer in the Alabama Army National Guard. Ultimately, I aspire to be a federal judge myself one day, which is why I have spent so much time working in the court system.

While working for Judge Parker, I drafted opinions for his clerks, which they reviewed and sent to Judge Parker for his approval. Most of my work centered around 28 U.S.C. §2241 petitions with respect to immigration law and attending settlement conferences with Judge Parker. Further, I also assisted his clerks in compiling report and recommendation memorandums for Judge Parker to send to Judge Starrett. This summer, I hope to gain the same experience from Judge Norris as I did from Judge Parker last summer

At the SEC, I interned in the Enforcement Division of the Atlanta Regional Office. My primary responsibility was to find tiny holes in investigations and draft reports to send to the Senior Enforcement Counsel, Edward H. Saunders. Having had the opportunity to work on multi-million-dollar securities fraud cases, I have gained a unique perspective as to how I approach federal investigations for the Government.

Ultimately, in selecting me as your next term law clerk, you're selecting someone who has the experience, the drive, and the passion for serving the American people. I will make you one promise in closing: I will give you 110% effort every single day as your next term law clerk. Please find attached my resume and transcript for your review. Thank you again for your time and consideration. If you have any questions, please feel free to contact me at 251-229-1402 or at charlessalamone1@gmail.com.

Very Respectfully,

/s/ Charles H. Salamone

C. HUNTER SALAMONE

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CELL: 251-229-1402 OFFICE: 662-380-5591
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Education

The University of Mississippi School of Law Oxford, MS
Juris Doctor Candidate, May 2022
GPA: 3.37 (Class Rank: 62/155)

Troy University Troy, AL
Bachelor of Science in English, May 2018
GPA: 3.72; Magna Cum Laude Graduate

Legal Experience

The Honorable Mark S. Norris, United States District Court, Western District of Tennessee, Memphis, TN, *Summer Judicial Intern*, May-July 2021

- Accepted offer to intern for Judge Norris for the entirety of Summer 2021

United States Attorney's Office for the Northern District of Mississippi, Oxford, MS, *Student Intern*, August 2020-Present

- Assists the USAO by serving as a student intern and a part time federal employee
- Currently tasked with answering phones, assisting AUSAs with a variety of administrative tasks, and making copies of documents

U.S. Securities and Exchange Commission (Student Honors Program), Atlanta, GA, *Legal Intern*, August-November 2020

- Assisted the Commission on multi-million-dollar fraud cases, insider trading, etc.
- Assisted Senior SEC Counsel Edward H. Saunders with research, subpoenas, depositions, and written correspondence to witnesses
- Rated by Ed Saunders, the Senior Counsel of the SEC, in the top 5% of the over 1000 interns that he mentored in his 22-year career at the SEC

The Honorable Michael T. Parker, United States District Court, Southern District of Mississippi, Hattiesburg, MS *Summer Judicial Intern*, May-July 2020

- Assisted Judge Parker and his clerks on drafting various opinions for 42 U.S.C. § 1983 Petitions and 42 U.S.C. § 2241 petitions
- Attended civil settlement conferences, sentencing hearings, change of plea hearings, and various other aspects of court functions
- Attended hearings by Senior District Judge Keith Starrett

Cunningham Bounds, LLC., Mobile, AL *Runner*, February-July 2019

- Worked in an office with twelve attorneys and dozens of paralegals and office assistances
- Organized hundreds of files, delivered mail via hand delivery, assisted with trial preparation, assisted investigators, and was a vocal leader within the assigned group

Andy Citrin Injury Attorneys, Foley, AL *Paralegal*, June 2018-January 2019

- Managed accident/injury caseloads of over 100 clients at time
- Composed dozens of trial memorandums, subpoenas, and complaints for injured clients
- Responded to interrogatories, requests for production, and subrogation matters

C. Hunter Salamone Page 2 (Continued):

United States Army

Group Paralegal, 20th Special Forces Group (Airborne), Alabama National Guard, Birmingham, AL July 2018- Present

- Serves as the Group's primary paralegal for all matters related to military law and works directly for Major Elijah Beaver, the Group Judge Advocate.
- Drafted actions to punish violators of the Uniform Code of Military Justice
- Assisted Major Beaver in advising the Group Commander, Colonel Shawn Satterfield, on simulated targeting strikes at annual training in Fort Carson, Colorado
- Assisted the 20th Special Forces Group in prosecuting a member of a known white supremacist group

Military Justice Battalion Paralegal Specialist, Joint Base Elmendorf-Richardson, AK September 2016 - July 2018

- Managed all legal actions for two battalions (each consisting of 1000 soldiers)
- Served as Lead Paralegal for eight courts-martial trials
- Processed over 35 discharges and 80 administrative punishments
- Issued dozens of subpoenas for federal criminal trials
- Awarded Army Achievement Medal and received personal letter of commendation from Commanding General, Mark J. O'Neil, for outstanding leadership in prosecuting and preventing Sexual Assault

United States Army Airborne School, Fort Benning, GA July - August 2016

- Performed five Airborne jumps from a high-performance aircraft at 1000 feet or higher
- Graduated as a fully qualified paratrooper

Client Legal Services Paralegal Specialist, Camp Casey, South Korea July 2015 - July 2016

- Served an average of 20-30 clients per day
- Performed over 1000 notaries and power of attorneys
- Assisted attorneys in rebuttals for loss of property and criminal misconduct
- Drafted hundreds of memorandums for supervising Judge Advocates
- Performed legal research in family law, financial liability, and federal vs. state law on LexisNexis
- Received an Army Achievement Medal, The Korean Defense Service Medal, an Overseas Service Ribbon, and a Certificate of Achievement

United States Army Paralegal Specialist Training Center and School, Fort Lee, VA, (April 2015- June 2015)

Basic Combat Training, Fort Jackson, SC (Feb 2015- April 2015)

Military Awards and Decorations:

Active Duty Honorable Discharge
Certificate of Achievement
Army Achievement Medal (2)
Army Good Conduct Medal
Parachutist Badge
Overseas Service Ribbon (2)
National Defense Service Ribbon
Korean Defense Service Ribbon
Army Service Ribbon
Special Forces Basic Combat Qual. Course

Professional Affiliations:

Federalist Society (2019-Present)
Christian Legal Society (2019-Present)
Phi Alpha Delta (2019-Present)

Issued to Student

Name: Salamone, Charles
Student ID: 10476392
SSN: *****7390
Birthdate: 03/06/****
Address: 102 Riveroaks Dr.
Fairhope, AL 36532

Any questions regarding the accuracy of this transcript can be directed to the Office of the University Registrar. All transfer work is reflected in hours earned. Only course work attempted at the University of Mississippi is posted on the official transcript.

Print Date: January 13, 2021

---------- Academic Program ----------

Current Program:: Juris Doctor
College/School: School of Law
Major - Juris Doctor Law

---------- Degrees Awarded ----------

-------- Transfer Credit --------

Name	Dates of Attendance
Troy University	01/15/2016 - 05/20/2018

---------- Beginning of Records ----------

Fall Semester 2019
Law

Course	Description	Attempt	Grade
Law 503	Civil Procedure I	3.00	B-
Law 501	Contracts	4.00	B+
Law 514	Legal Research and Writing I	4.00	B
Law 502	Torts	4.00	A-

SEM: ATM 15.00 ERN 15.00 GRD 15.00 PTS 48.10 GPA 3.20
CUM: ATM 15.00 ERN 15.00 GRD 15.00 PTS 48.10 GPA 3.20

Winter Intersession 2020
Law

Course	Description	Attempt	Grade
Law 590	Contract Negotiation and Drafting	3.00	B+

SEM: ATM 3.00 ERN 3.00 GRD 3.00 PTS 9.90 GPA 3.30
CUM: ATM 18.00 ERN 18.00 GRD 18.00 PTS 58.00 GPA 3.22

Spring Semester 2020
Law

Course	Description	Attempt	Grade
Law 507	Constitutional Law I	3.00	P
Law 568	Criminal Law	3.00	P
Law 515	Legal Research and Writing II	2.00	P
Law 504	Property	4.00	P
Law 577	Civil Procedure II	3.00	P

SEM: ATM 15.00 ERN 15.00 GRD 0.00 PTS 0.00 GPA
CUM: ATM 33.00 ERN 33.00 GRD 18.00 PTS 58.00 GPA 3.22

Full Summer Session 2020
Law

Course	Description	Attempt	Grade
Law 635	Criminal Procedure I: Investigation	3.00	A
Law 735	White Collar Crime	3.00	A-

SEM: ATM 6.00 ERN 6.00 GRD 6.00 PTS 23.10 GPA 3.85
CUM: ATM 39.00 ERN 39.00 GRD 24.00 PTS 81.10 GPA 3.37

Fall Semester 2020
Law

Course	Description	Attempt	Grade
Law 654	Clinics: Externship	12.00	Z

SEM: ATM 12.00 ERN 12.00 GRD 0.00 PTS 0.00 GPA
CUM: ATM 51.00 ERN 51.00 GRD 24.00 PTS 81.10 GPA 3.37

---------- End of Transcript ----------

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CURRENT STUDENTS

Welcome Charles!

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1516374 Charles Salamone

Course/Section and Title	Grade	Credits	CEUs	Repeat	Term
ENG-4400 XTIA Sel Top Lit - World War I Lit	A	3.00			18/T4
ENG-4403 XTIA English Renaissance Literature	A	3.00			18/T4
SCI-2234 XTID Earth & Space Science	A	3.00			18/T4
SCI-L234 XTID Earth and Space Science Lab	A	1.00			18/T4
ENG-3326 XTIA Science Fiction	A	3.00			18/T3
ENG-3362 XTIA Arthurian Legend Through Ages	A	3.00			18/T3
ENG-4425 XTIA Modern Novel	A	3.00			18/T3
ENG-3352 XTIA Advanced Creative Writing I	A	3.00			17/T2
ENG-4431 XTIA Shakespeare II: The Comedies	A	3.00			17/T2
ENG-4495 XTIA Senior Seminar in English	A	3.00			17/T2
ENG-3351 XTIA Intro to Creative Writing	A	3.00			17/T1
ENG-4430 XTIA Shakespeare I: The Tragedies	A	3.00			17/T1
TROY-1101 XTIA University Orientation	A	1.00			17/T1
ENG-4405 XTIA History of Eng Language	DR	0.00			17/T4
ENG-4465 XTIA African-American Literature	A	3.00			17/T4
ENG-2244 XTIA British Literature Before 1785	A	3.00			17/T3
ENG-3341 XTIA Advanced Grammar	A	3.00			17/T3
BIO-1100 XTIA Principles of Biology	A	3.00			16/T2
BIO-L100 XTIA Principles of Biology Lab	B	1.00			16/T2
ENG-2245 XTIA British Literature After 1785	B	3.00			16/T2
CJ-3345 Criminology	B	3.00			
ECO-2252 Prin of Microeconomics	A	3.00			
ENG-2206 World Literature After 1660	B	3.00			
SOC-2275 Introduction to Sociology	A	3.00			
ENG-2211 American Lit Before 1875	A	3.00			
ENG-2212 American Lit After 1875	A	3.00			
IS-2241 Computer Concepts and Applic	A	3.00			
POL-2241 American National Government	A	3.00			
MUS-1131 Music Appreciation	A	3.00			
POL-3300 Foundations Political Science	A	3.00			
MS-XXXX Military Credit Accepted	S	3.00			
MS-XXXX Military Credit Accepted	S	1.00			
MS-XXXX Military Credit Accepted	S	1.00			
MS-XXXX Military Credit Accepted	S	1.00			

Transcript

MS-XXXX Military Credit Accepted	S	2.00			
MS-XXXX Military Credit Accepted	S	2.00			
MS-XXXX Military Credit Accepted	S	2.00			
MS-XXXX Military Credit Accepted	S	2.00			
MS-XXXX Military Credit Accepted	S	1.00			
MS-XXXX Military Credit Accepted	S	1.00			
MS-XXXX Military Credit Accepted	S	1.00			
MS-XXXX Military Credit Accepted	S	1.00			
ENG-2205 World Literature Before 1660	B	3.00			
KHP-ELEC Kines & Hlth Promo Elective	A	3.00			
PHI-2203 Introduction to Philosophy	C	3.00			
COM-2241 Fundamentals of Speech	A	3.00			
ENG-1102 Comp and Modern English II	B	3.00			
HIS-1122 World History to 1500	B	3.00			
HIS-1123 World History From 1500	A	3.00			
ENG-1101 Comp and Modern English I	A	3.00			
MTH-1112 Pre-Calculus Algebra	C	3.00			

Total Earned Credits	126.00
Total Grade Points	401.00
Cumulative GPA	3.713

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
950 EAST PACES FERRY ROAD, N.E., SUITE 900
ATLANTA, GA 30326-1382

ATLANTA
REGIONAL OFFICE

January 27, 2021

To Whom It May Concern

RE: Letter of Recommendation for Charles Salamone

Dear Sir or Madam:

Charles Salamone has asked me for a letter of recommendation and I am more than happy to oblige. I am a Senior Counsel with the Division of Enforcement of the United States Securities and Exchange Commission ("Commission"). I first met Mr. Salamone in August 2020, when he was an intern in the Division of Enforcement's Atlanta Regional Office ("ARO") working full-time. I was his immediate supervisor and worked with him virtually every day from August 31, 2020 through December 11, 2020.

I, along with Penny Morgan, another Senior Counsel, have run the Commission's Intern Program for the ARO for the past twenty years. The Intern Program is a highly competitive program that accepts second and third-year law students to work with the Enforcement Division in the Home Office in Washington D.C. as well as the regional offices throughout the country. We receive quite a few applications for six to eight full-time intern positions per semester in the ARO alone. During my tenure, I have personally worked with over 1,000 interns. I would place Mr. Salamone in the top 5% of that group. His work for me was outstanding, and it has been a pleasure to work with him.

When I first meet with the interns at the beginning of the semester, I tell them all the same thing: I expect their absolute best efforts all the time. With Mr. Salamone, that is exactly what I got. His efforts were consistently superior when compared to the work product of the other interns. His written work was excellent as was his research. His analytical skills were especially helpful in assisting me in my investigations.

The assignments we give to interns usually involve an extremely difficult and complicated fact pattern or a very difficult research issue due to the complexity of our investigations. What makes Mr. Salamone stand out is his ability to quickly assess the parameters of the specific assignment, devise a well-reasoned plan, and then complete the assignment. Whatever project I gave him was completed satisfactorily and in a timely and exemplary manner.

During his time with the Enforcement Division, Mr. Salamone was primarily involved in assisting me in reviewing approximately 250,000 pages of documents that were produced in response to a request in an extremely complicated Enforcement investigation. He also assisted

me in drafting legal research memos applying the evidence to specific federal securities statutes, strategy sessions, and in drafting an action memo that will eventually be submitted to the Commission for its review.

As a former captain in the United States Marine Corps, I like to think that I know a little bit about character, honor, and doing what is right not because it is popular or easy but rather because it is the right thing to do. I can assure you that I do not write recommendations this glowing for the majority of the interns who have worked for me. The reason for this is because I do not believe that most of the interns I have worked with are extraordinary. Mr. Salamone, however, is an exception to that statement. To me, the fact that Mr. Salamone has successfully served for more than 6 years in the Army National Guard is additional evidence of this young man's character. He is very bright, highly ethical, an excellent writer, and one of the best interns I have ever had the pleasure to work with at the Commission. If it was within my power, I would offer him a job with the Enforcement Division today. If you have any questions, please do not hesitate to give me a call.

Sincerely,

Edward H. Saunders

Edward H. Saunders
Senior Counsel
Division of Enforcement
Work Cell: 404-797-0627

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
950 EAST PACES FERRY ROAD, N.E., SUITE 900
ATLANTA, GA 30326-1382

ATLANTA
REGIONAL OFFICE

March 1, 2021

To Whom It May Concern

RE: Letter of Recommendation for Charles Salamone

Dear Sir or Madam:

Charles Salamone has asked me for a letter of recommendation and I am more than happy to oblige. I am a Senior Counsel with the Division of Enforcement of the United States Securities and Exchange Commission ("Commission"). I first met Mr. Salamone in August 2020, when he was an intern in the Division of Enforcement's Atlanta Regional Office ("ARO") working full-time. I was his immediate supervisor and worked with him virtually every day from August 31, 2020 through December 11, 2020.

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Sincerely,

Edward H. Saunders

Edward H. Saunders
Senior Counsel
Division of Enforcement
Phone: 404-797-0627

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
701 North Main Street, Suite 216
Hattiesburg, Mississippi 39401
(601) 255-6370

Michael T. Parker
U.S. Magistrate Judge

April 7, 2021

Honorable Elizabeth W. Hanes
United States Magistrate Judge
United States District Court
Eastern District of Virginia
Richmond, VA 23219

Re: Clerkship Application of Charles Salamone

Dear Judge Hanes,

This letter is submitted at the request of Charles Salamone who has applied for a clerkship with your chambers.

Mr. Salamone served as an intern in my chambers for part of the summer of 2020. Interns attend court hearings and conferences, conduct research, write legal memoranda, and draft proposed orders.

Mr. Salamone was an enthusiastic intern who eagerly volunteered for every project and who seemed to enjoy the challenge of every assignment. He did good work while here, conducted himself in a professional manner, and worked well with the other interns and staff.

Though my observations of him are limited to the several-week period that he was with us, I believe he has the skills, desire, and work ethic to serve as an effective judicial law clerk and am pleased to recommend him to you.

Sincerely,

Michael T. Parker
United States Magistrate Judge

MTP\kpm

Phone (601)255-6370 • Fax (601)255-6371 • parker_chambers@mssd.uscourts.gov

April 09, 2021

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

It is my pleasure to recommend Specialist Charles "Hunter" Salamone for a judicial clerkship! I am the Command Judge Advocate for the 20th Special Forces Group (Airborne), a unit of the Alabama Army National Guard. Spc. Salamone serves as a paralegal and often covers the duties of the vacant position of senior paralegal non-commissioned officer for the Group, working under my direct supervision as a part of the headquarters legal team.

Even in the civilian world, I think it should be noteworthy that Spc. Salamone volunteered for a position requiring him to parachute from an aircraft directly into combat. Only a man who is confident and competent would choose such a path, and Spc. Salamone is both. He embodies the Airborne spirit. Spc. Salamone is ready at a moment's notice to take on any task required of him, including the decidedly more mundane legal research and writing skills he employs daily.

A Special Forces headquarters has more complex mission sets, training, and funding -- and therefore more complex legal issues -- than any other type of unit in the Army. Spc. Salamone has engaged those issues with alacrity and enthusiasm. He is always ready to dig into the obscure corners of law and policy, and then to craft an answer that is understandable by the rank and file and not just the attorneys. He has proven himself to be thorough, and to understand the needs of not only the Army, but also the individual soldiers. In addition to his normal duties of legal research and drafting documents, he frequently serves as a sounding board for proposed legal advice to the Command.

I would personally hire Hunter Salamone for any job in the legal profession, and in fact I am currently lobbying to keep him in the Army as an attorney when he graduates from law school. His research, writing, and interpersonal skills certainly qualify him for a judicial clerkship. He will undoubtedly be an asset to your office.

Very respectfully,

Elijah T. Beaver
Major, Alabama Army National Guard
Command Judge Advocate, 20th Special Forces Group (Airborne)
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(334)610-1515

C. HUNTER SALAMONE
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CharlesSalamone1@gmail.com

January 30, 2020

Dear Sir or Ma'am:

Please find my attached writing sample for your review. This writing sample originates from a memorandum that I wrote for my legal writing class for Professor C. Jackson Williams at the conclusion of my first semester of law school in December of 2019.

The purpose of this memorandum was to analyze Ms. Wanda Jackson's claim of false imprisonment against Hill Country Air. I am writing this memorandum in the fictional jurisdiction of Tishomingo, which lies in between Mississippi and Alabama. Mississippi law governs the State of Tishomingo. In this jurisdiction, false imprisonment has two elements: involuntary detention and unlawfulness. This sample will cover the second part of the memo, where I address the element of unlawfulness. In the earlier portion of this memorandum, I have concluded that Ms. Jackson was involuntarily detained.

Very Respectfully,

/s/ C. Hunter Salamone

C. "Hunter" Salamone
Juris Doctor Candidate
The University of Mississippi School of Law
University, MS 38677

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B. The Aircrew's detention of Wanda Jackson was probably not unlawful

The aircrew probably detained Wanda Jackson against her will. However, the detention was not unlawful because, given the totality of the circumstances, her detention was not objectively unreasonable. Furthermore, courts have traditionally not treated gout and claustrophobia as an exigent condition, returning her to gate would have prejudiced the interests of all the other passengers aboard the aircraft, and her actions violated policies embodied in federal aviation regulations.

Involuntary detention is lawful if it is "objectively reasonable" given the "totality of the circumstances." *Wallace v. Thornton,* 672 So.2d 724, 725 (Miss. 1996). These circumstances include "the nature, purpose, extent and duration" of the defendant's acts. *Wallace v. Thornton,* 672 So.2d 724, 725 (Miss. 1996). Furthermore, "[a] detention reasonable at its inception, however, may become unreasonable, and the imprisonment thus false, when it continues past the point where the officers' objectively reasonable needs for the detention cease to exist." *Thornhill v. Wilson*, 504 So.2d 1205, 1207 (Miss. 1987).

In *Wallace*, two bail bondsmen mistakenly kicked in the wrong door of the home of an innocent young woman. *Id.* at 725. When the young woman demanded payment for the erroneously kicked in door to her home, the bail bondsmen forced her to travel with them to their office where she spent a total of thirty minutes. *Id.* at 727. The trial court found that the detention of the young woman was unreasonable given the circumstances and force surrounding the detention and remanded the case to a new trial. However, in *Thornhill*, the court found that the five-minute detention of a suspect in the back of a police car was not unreasonable even though officers knew that the defendant was not guilty. *Id.* at 1207.

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Specifically, in regard to airline detention, one court has held that airlines have no duty to release a passenger if releasing said passenger would substantially prejudice the interests of the other passengers aboard the airplane. *Abourezk v. N.Y. Airlines, Inc.*, 895 F.2d 1456, 1458 (D.C. Cir. 1990). The court held that there is no "duty to release" unless a passenger "demonstrate[s] the sort of exigency that would mandate his release from the aircraft." *Id.* at 1458. It rejected the idea that a passenger's interest in meeting with the United Nations was sufficient to justify such an exigency. *Id.* at 1458. Furthermore, the court held that since the plaintiff received no medical treatment, was not hospitalized, and took no medication during or after the delay, "he sustained no physical injury and the incident did not aggravate any pre-existing condition." *Id.* at 1458.

Furthermore, the "exigent circumstances" standard set forth in *Abourezk* was expanded with the decision in *Ray v. American Airlines, Inc.*, 609 F.3d 917 (8th Cir. 2010). In *Ray*, a passenger alleging that she had experienced stomach problems and mild claustrophobia while aboard the airplane was given multiple opportunities to deboard an aircraft and subsequently declined to do so. *Id.* at 918. The passenger was then left on the plane for nine hours. *Id.* at 919. The passenger then filed a false imprisonment claim against the airline. *Id.* at 918. However, the Court of Appeals for the Eighth Circuit affirmed that "allegations of an upset stomach and mild claustrophobia do not rise to the level necessary to support a negligence claim . . . ." *Id.* at 919.

In addition to case law, federal regulations govern airline/passenger relations due to the dangerous nature of commercial air transportation and the special role that aviation has in modern society. Specifically, 14 C.F.R. § 91.11 states that one "may not interfere with a member of a flight crew in the capacity of their duties." Additionally, one court ruled that the "[p]laintiff need not identify and prove any specific duty. . .was prevented or hindered from performing" but

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only that a "flight attendant's ability to perform his or her normal duties was prevented or lessened. . . ." *U.S. v. Liu*, CRIM. 04-00033, 2004 WL 2556483 (D. N. Mar. Is. 2004).

The FAA's premiere operations regulation is referred to as the "Flight Standards and Information Systems." In Section 3-3561(e) of the Flight Standards and Information Systems, it states that "[r]equiring passengers to be seated before the passenger loading door is closed is one way air carriers have chosen to obtain passenger compliance with the lighted seatbelt sign. This is a good practice, but not one that the FAA requires." However, under section 3-3561(d), "…the seatbelt sign must be turned on prior to movement on the surface" and passengers who refused to comply with this order are routinely fined by the FAA.

Turning to Wanda Jackson's case, it is clear that HCA detained Wanda Jackson involuntarily. Regardless, HCA's detention was lawful because the totality of the circumstances does not warrant an objectively unreasonable detention. Her gout and claustrophobia did not create an exigent condition, returning her to the gate would prejudice the interests of all the other passengers aboard the aircraft, and her actions were in violation of federal law when she disobeyed the order of the flight crew to remain seated while aboard the aircraft.

Wanda Jackson will likely begin her argument by arguing two factors: the excessive length of the delay and the medical necessity of her condition. She will unquestionably define the confinement to her seat for over three hours as "objectively unreasonable given the totality of the circumstances" under the decision in *Thornhill*. She will argue that her only motive for exiting the aircraft was to alleviate her pain. While her two-prong argument likely hinges on the court's acceptance of Ms. Jackson's condition as an exigent circumstance, Ms. Jackson will likely attempt to depict the airline as rude, hostile, and unprofessional.

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First, Wanda will likely argue that her detention was unreasonable and that, given the totality of the circumstances, her detention should meet the standard set forth by the Mississippi Supreme Court in *Wallace*. She will also argue that even if her detention was initially "objectively reasonable" that, after several hours of being trapped on a stationary plane, her detention became unreasonable due to the excessive delay. She will also argue that her period of detention was much longer than both Wallace and Thornhill and that the length of time alone makes the detention unreasonable. Thus, she should be able to recover under the decision in *Thornhill*.

Second, Wanda will also argue that, in addition to the lengthy delay, she faced an exceptional circumstance to deboard due to her gout and her claustrophobia. She will argue that she needed to escape due to medical necessity. She will present the statement of Dr. Schimmel who describes the pain of gout as "excruciating," "burning," and "boiling." She will state that her claustrophobia caused her breathing problems and that under no other circumstance than deboarding could she escape her torment. She will probably attempt to mitigate her failure to follow federal law by stating the she was in severe pain and could not have possibly acted in a reasonably prudent manner.

However, HCA will argue that its actions are in keeping with industry practices and that the detention was not unreasonable "given the totality of the circumstances." It will use the events that occurred aboard the aircraft and Wanda Jackson's own behavior in its argument to show that no such exigent circumstances existed. HCA will contend that Wanda Jackson belligerently disobeyed the orders of a flight crew member and voluntarily chose to break federal law. Finally, it will introduce the Flight Standards and Information's system to show that not

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only did it act in a reasonable manner, it was simply following the best practices set forth by the FAA.

In direct response to the lengthy delay, HCA will state that it has no control over severe winter weather. It will also contend that, unlike Ms. Wallace, Ms. Jackson implicitly consented to boarding the aircraft of her own free will and that Ms. Jackson had at least four prior opportunities to deboard to which she declined. It will likely state that the only reason Wanda was confined to her seat for three hours was because of the decision of Wanda Jackson. It will argue that when other passengers chose to deboard, Wanda Jackson did not. HCA will also likely point out that Ms. Jackson faced a substantially shorter delay than Ms. Ray did. It will argue that given the harsh weather delays, the severe backup of many major airports, and the totality of the circumstances, the detention of Wanda Jackson was objectively reasonable under both the *Wallace* and *Thornhill* decisions.

In response to Wanda's alleged exigent circumstances, HCA will unquestionably present the decision in *Ray* as a persuasive case to all but negate her claims of medical necessity in regard to her claustrophobia. They will also present the decision in *Abourezk* to state that she did not have an exigent circumstance and that returning her to the gate would have "prejudiced the interests of all the other passengers." HCA will also likely remind the court that Wanda Jackson declined four opportunities to deboard the plane by her own admission and that, had she have been experiencing such an emergency, she had the opportunity to deboard.

Furthermore, HCA will use Wanda's own behavior on the plane against her. It will state that if Ms. Jackson had been experiencing "excruciating," "burning," and "boiling" pain, as she so claims, then it is suspicious as to why she chose to remain on her feet in pacing the aisles of the airplane, as evidenced by the statement of Tyler Keith. It will also bring up the fact that Ms.